



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General of
the State of Illinois,

Plaintiff-Intervenor

-v-

MANVILLE SALES CORPORATION
(now known as Johns Manville)

Defendant.

CIV. ACTION NO. 88C 630

FIRST AMENDED CONSENT DECREE

Date Lodged with Court: 2/11/04

Date Entered by Court: 12/14/04

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PREAMBLE

This First Amended Consent Decree incorporates changes and additions to the remedial work performed and ongoing work to be performed by Manville Sales Corporation (now known as Johns Manville) under the original Consent Decree in this action, which was entered on or about March 18, 1988. The First Amended Consent Decree also restates and updates certain other provisions in the original Consent Decree. When entered by the Court, this First Amended Consent Decree will be the governing document defining responsibilities for work by Johns Manville at its facility, as defined in Exhibit 3, in Lake County, Illinois.

A. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed the Johns Manville Waukegan Disposal Area in Waukegan, Illinois on the National Priorities List ("NPL"), which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

B. U.S. EPA and Manville Sales Corporation, now known as Johns Manville, on June 14, 1984, entered into an Administrative Order by Consent ("Consent Order"), under which Manville Sales Corporation agreed to conduct a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. Part 300 for the Johns Manville Waukegan Disposal Area. At various times, Manville Sales Corporation has been known as Johns-Manville Sales Corporation, Schuller International, Inc., Johns Manville International, Inc. and is currently known as Johns Manville. For purposes of this First Amended Consent Decree, Manville Sales Corporation and

these other entities shall be referred to as "JM";

C. JM submitted a Remedial Investigation ("RI") Report on July 3, 1985, and submitted a Feasibility Study ("FS") Report in December 1986 recommending remedial action consisting, inter alia, of an 18-inch thick soil cover with vegetation over specified areas of the Waukegan Disposal Area;

D. The U.S. EPA submitted an Addendum to the Final Feasibility Study Report on January 28, 1987, which recommended, inter alia, a cover thickness of 24 inches of compacted, non-asbestos-containing material, with vegetation, to be placed over the specified areas of the Waukegan Disposal Area;

E. The FS Report, as modified by the Addendum, contained a proposed plan for a remedial action at the Johns Manville Waukegan Disposal Area;

F. On or about January 23, 1987, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the completion of the RI/FS and of the proposed plan for a remedial action and provided opportunity for public comment to be submitted in writing to U.S. EPA in February 1987 or orally at a public meeting held in the City of Waukegan, Illinois, on February 9, 1987;

G. U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public;

H. Various persons provided comments on U.S. EPA's proposed plan for a remedial action, and U.S. EPA provided a summary of responses to the significant comments, criticisms and new data submitted during the aforementioned comment period;

I. On January 17, 1987, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, notified JM that the U.S. EPA had determined JM to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Johns Manville Waukegan Disposal Area and JM responded to such notice;

J. Considering the proposed plan for remedial action and the public comments received, U.S. EPA reached a decision on a final remedial action plan;

K. U.S. EPA's decision on a remedial action was incorporated in an Original Record of Decision, ("Original ROD") which was executed on June 30, 1987, to which the State of Illinois ("State") gave its concurrence;

L. On January 22, 1988, the United States of America filed a Complaint against Manville Sales Corporation (now known as Johns Manville or JM) under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for reimbursement of costs and performance of remedial action at the Johns Manville Waukegan Disposal Area. The State of Illinois filed a motion for leave to intervene in the action, which was granted on February 26, 1988. The action was resolved in a Consent Decree entered by this Court on or about March 18, 1988 (the "Original Consent Decree"), in which JM agreed to implement the remedial action plan in the Original ROD. The State of Illinois was a party to the Original Consent Decree;

M. During construction of the remedy, pursuant to work plans approved by U.S. EPA with Illinois EPA concurrence, JM implemented additional work and several changes to the remedy outlined in the Original ROD and the Original Consent Decree. On February 9, 1993, U.S. EPA issued an Explanation of Significant Differences ("First ESD") to the Original ROD, pursuant to Section 117(c) of CERCLA, 42 U.S.C. Section 9617(c), and 40 C.F.R.

§ 300.435(c)(2)(i), to explain the differences between the action actually taken and the remedy described in the Original ROD, and the reasons for the changes. The First ESD also required that certain land use restrictions be placed on the property to ensure the integrity of the constructed remedy. The First ESD is attached at Exhibit 1. Several of the changes set forth in the First ESD require modifications to the Original Consent Decree;

N. In 1985, JM ceased all manufacturing of asbestos products at the Johns Manville Waukegan Area. In 1998, JM ceased all remaining manufacturing at the Johns Manville Waukegan Area, causing U.S. EPA to evaluate how the Johns Manville Waukegan Disposal Area might be permanently closed. In the course of this evaluation, U.S. EPA determined that additional work and several changes (over and above those enumerated in the First ESD) were required in the remedial action set forth in the Original ROD and Original Consent Decree. On September 22, 2000, U.S. EPA issued a Second Explanation of Significant Differences ("Second ESD") to the Original ROD, pursuant to Section 117(c) of CERCLA, 42 U.S.C. Section 9617(c), and 40 C.F.R. § 300.435(c)(2)(i). The Second ESD explains the necessity and reasons for the further changes to the Original ROD and is attached at Exhibit 2. Several of the changes set forth in the Second ESD require modifications to the Original Consent Decree. Since 1998, the parties have discovered further asbestos contamination in several areas on and/or adjacent to the Johns Manville Waukegan Disposal Area, including Sites 1, 2, 3, 4, 5, 6 and 7 as approximately depicted in Exhibit 4. This First Amended Consent Decree does not include response actions for these areas; however these Sites will be addressed by separate actions.

O. Pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621, the remedial action selected in the ROD, as modified to include the First ESD and Second ESD (the "ROD as

Modified”), attains legally applicable or relevant and appropriate standards, requirements, criteria or limitations under Federal environmental law and State environmental or facility siting law;

P. U.S. EPA, the State of Illinois and JM have determined that the remedial action plan adopted by U.S. EPA in the ROD as Modified will attain a degree of clean-up of hazardous substances, pollutants and contaminants released into the environment and of control of further releases which, at a minimum, assures protection of human health and the environment within the Facility;

Q. The remedial action plan in the ROD as Modified is in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, and with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300;

R. Under Section V of the Original Consent Decree in this action, JM agreed to perform the remedial work required in the Original ROD. In Section V of this First Amended Consent Decree, JM agrees to perform the work required in the ROD as Modified. U.S. EPA and the State have determined that JM is qualified to implement the work required under this First Amended Consent Decree;

S. The Illinois Environmental Protection Agency (“Illinois EPA”) is a party to this First Amended Consent Decree pursuant to Section 4 of the Illinois Environmental Protection Act, 415 ILCS 5/4 (2002); and

T. The Parties recognize, and the Court by entering this Consent Decree, finds that entry of this First Amended Consent Decree, will avoid prolonged and complicated litigation between the Parties, and will expedite cleanup of the Facility.

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto. JM shall not challenge the terms of this First Amended Consent Decree or the Court's jurisdiction to enter and enforce it.

II. PARTIES BOUND

2. This First Amended Consent Decree applies to and is binding upon the United States and the State and upon JM and its successors and assigns, including any reorganized company of JM. The undersigned representatives of JM and the State of Illinois and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each certifies that he or she is fully authorized to enter into the terms and conditions of this First Amended Consent Decree and to execute and legally bind such Party to this document.

3. JM shall provide a copy of this First Amended Consent Decree to the contractors hired to perform the work required by this First Amended Consent Decree and shall require the contractors to provide a copy thereof to any subcontractor retained to perform any part of the required work. Notwithstanding the terms of any contract, however, JM is responsible for compliance with this First Amended Consent Decree, and for ensuring that its contractors and subcontractors comply with the Decree.

III. DEFINITIONS

4. Whenever the following terms are used in this First Amended Consent Decree and any Exhibits attached hereto, the definitions specified in this Section shall apply:

(a) "Contractor" means the company or companies retained by or on behalf of JM to undertake and complete the work required by this First Amended Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the work for which it is retained.

(b) "Facility" means only the area within the boundaries depicted on the facility map attached hereto as Exhibit 3. The Facility is located within Lake County, Illinois generally south of Illinois Beach State Park, west of Lake Michigan, north of Greenwood Avenue and east of the Union Pacific Railroad Line. The Facility does not include JM's former manufacturing area, which is currently enrolled in the State of Illinois Site Remediation Program and is approximately depicted in Exhibit 5. The Facility does not include any areas adjacent to and/or outside of the boundaries set forth in Exhibit 3.

(c) "Future liability" refers to liability for the area within the Facility boundaries depicted in Exhibit 3 arising after Certification of Completion of Work/Remedial Action by U.S. EPA and Illinois EPA, pursuant to Section XXII hereof.

(d) "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

(e) "Illinois EPA" means the Illinois Environmental Protection Agency.

(f) "JM" means Johns Manville and its predecessor companies, Manville Sales Corporation, Johns-Manville Sales Company, Johns Manville International, Inc. and Schuller International, Inc. and their predecessors, successors and assigns.

(g) "Johns Manville Waukegan Disposal Area" means the portion of the Johns Manville owned property in Waukegan, Illinois that was placed on the National Priorities

List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

(h) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

(i) "Non-asbestos-containing materials or soils" means materials or soils which have been determined to contain asbestos at or below background, in accordance with methods approved in the Phase II Work Plans.

(j) "O & M Manual" means the Second Draft Operation and Maintenance Plan dated February 28, 1992 ("O & M Manual") including any amendments thereto approved by U.S. EPA with the concurrence of Illinois EPA.

(k) "Original Consent Decree" means the Consent Decree entered by this Court on March 18, 1988 in United States et al. v. Manville Sales Corporation, Civil Action No. 88 C 630 (N.D. Ill.).

(l) "Original Record of Decision" means the Record of Decision signed by the Regional Administrator for the Johns Manville Waukegan Disposal Area dated June 30, 1987.

(m) "Parties" means the United States of America, the State of Illinois and JM.

(n) "Phase II Remedial Work Plans" means the Final Remedial Work Plans and other Final Plans as approved or modified pursuant to Paragraph 15(h) for implementation of the remedial work required by Paragraph 15 and the ROD as Modified, and any amendments to

those Plans approved by U.S. EPA with the concurrence of Illinois EPA.

(o) "Plaintiffs" means the United States of America and the State of Illinois.

(p) "Record of Decision (ROD) as Modified" means the Original Record of Decision dated June 30, 1987 as modified by an Explanation of Significant Differences dated February 9, 1993, and a Second Explanation of Significant Differences dated September 22, 2000.

(q) "Remedial Action" means the Work as defined herein.

(r) "Response Costs" means any costs incurred by the United States or the State pursuant to 42 U.S.C. §§ 9601 et seq. or State law in connection with the Facility.

(s) "Revised (Amended) Remedial Work Plan" means the Remedial Work Plan adopted by U.S. EPA for implementation of remedial work at the Facility as approved under the Original Consent Decree, including the O & M Manual (defined above) as amended, and any amendments to that Remedial Work Plan approved by U.S. EPA.

(t) "State" means the State of Illinois.

(u) "United States" means the United States of America.

(v) "U.S. EPA" means the United States Environmental Protection Agency.

(w) "U.S. DOJ" means the United States Department of Justice.

(x) "Vegetated Soil Cover" means a minimum of 24 inches of compacted non-asbestos-containing soils with the following minimum composition: six inches of sand overlain by 15 inches of native clayey soil, three inches of topsoil and a vegetation cover. On sloped surfaces (greater than 20%) or other surfaces agreed to by the Parties and memorialized in an approved Phase II Remedial Work Plan pursuant to Paragraph 15(h), the six inch sand layer

may be replaced with eight inches of clayey soil (making a total of 23 inches of clay).

(y) "Waste Material" means any hazardous substance, as defined by 42 U.S.C. § 9601(14); or pollutant or contaminant as defined by 42 U.S.C. § 9601(33).

(z) "Work" means the implementation, in accordance with Section V hereof, of the Revised (Amended) Remedial Work Plan, the O & M Manual (as amended) and the Phase II Remedial Work Plans and any schedules or plans required to be submitted pursuant to those documents, and includes the reservation of environmental easement/restrictive covenants in accordance with Section VIII.

IV. GENERAL PROVISIONS

Financial Responsibility

5. Before entry of the Original Consent Decree in this action, JM established a cash escrow account ("Escrow Account") in an Illinois bank, in favor of the United States.

6. JM funded the Escrow Account with \$3.5 million in cash. During the course of the work required by the Original Consent Decree the balance of the Escrow was expended and the account closed, with U.S. EPA approval.

7. A second account ("Second Account") was established subsequently by JM, in favor of the United States. JM shall ensure that the funds in this Second Account total a minimum of \$500,000 at all times, until a Certificate of Completion of Work/Remedial Action is issued pursuant to Section XXII of this First Amended Consent Decree, unless otherwise agreed by the parties. Any money (including principal and accrued interest) left in the Second Account at the time of issuance of the Certificate of Completion of the Work/Remedial Action will revert to JM, without restriction, within thirty days of issuance of the Certificate of Completion of

Work/Remedial Action.

8. In addition to the foregoing requirements of this Section IV, JM shall maintain sufficient funds to assure the uninterrupted progress and timely completion of all phases of the Work required hereunder. JM shall submit periodic financial reports to the United States and the State, on January 31 of each year, that identify cash flow projections and project the level of funds that will be necessary for the Work for the succeeding one year period.

Commitment of JM

9. JM agrees to finance and perform the Work as it is defined in Subparagraph 4(z) and in Section V of this First Amended Consent Decree. As so defined, the Work shall be completed in accordance with the standards, specifications and within the time periods set forth in this First Amended Consent Decree, including the Revised (Amended) Remedial Work Plan, the O & M Manual and the Phase II Remedial Work Plans.

10. Nothing in this Consent Decree shall constitute a preauthorization claim against the Hazardous Substance Superfund within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

11. *This Consent Decree was negotiated by the Parties in good faith to avoid protracted, expensive litigation. The Parties agree that nothing herein and no performance hereunder shall constitute or be construed or used as an admission or acknowledgment of the factual or legal allegations of the Complaint, Administrative Order or this Decree, or of any liability, fault or wrongdoing under any law, rule or regulation by JM.*

Permits and Approvals

12. All activities undertaken by JM pursuant to this Consent Decree shall be

undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits, except that CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), shall apply to Work performed on-site, including excavation and dredging of sand and other materials from the Borrow Pit as identified and approximately delineated in Exhibit 3. The United States and the State have determined that the obligations and procedures authorized under this First Amended Consent Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

13. JM shall obtain all permits or approvals which are necessary to perform work off-site under federal, state or local laws and shall submit timely applications and requests for any such permits and approvals.

V. PERFORMANCE OF THE WORK

14. Under the Original Consent Decree, JM submitted a Revised (Amended) Remedial Work Plan to U.S. EPA and Illinois EPA to implement the work outlined in the Original Decree. U.S. EPA approved the Revised (Amended) Remedial Work Plan with the concurrence of Illinois EPA. Pursuant to that Plan, JM has performed the remedial activities summarized in Subparagraphs (a) through (r) below. Under this First Amended Consent Decree, JM agrees to perform the activities necessary to maintain the effectiveness of these remedial actions, as required under the O&M Manual. These activities are also described in Subparagraphs (a) through (r) below. These activities shall be performed in accordance with the schedules in the O&M Manual.

(a) Waste materials/soil in the inactive waste disposal areas of the Site (marked on Exhibit 6, and excluding peripheral roads) was graded and covered with a minimum

of 24 inches of compacted non-asbestos-containing soils. Except on sloped surfaces (greater than 20%), the cover consists of six inches of sand overlain by 15 inches of native clayey soil as described in the Feasibility Study. On sloped surfaces, the six inch sand layer was replaced with eight inches of clayey soil (making a total of 23 inches of clay) which provides equivalent freeze/thaw protection as the cover for level areas. In either case, three inches of topsoil was placed over the clayey soil cover, and a vegetation cover has been established. JM has graded and covered Waste materials/soil in a certain inactive waste disposal area of the Facility known as Area Z (marked on Exhibit 6, and excluding peripheral roads) with a minimum six inch compacted gravel layer overlain by a minimum two inch thick bituminous pavement cover. JM shall maintain the Facility cover, which includes the vegetative soil cover, asphalt cover and riprap outlined in Exhibit 6, according to the O & M Manual.

(b) The asbestos disposal pit was closed in June 1989 and was provided 24 inches of cover as described above, in accordance with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") requirements located at 40 C.F.R. § 61.151. JM shall maintain the closed asbestos disposal pit in accordance with the O & M Manual.

(c) The miscellaneous disposal pit was covered with non-asbestos containing materials and soils and will be closed pursuant to Paragraph 15 below. The sludge disposal pit was provided with a vegetative soil cover in accordance with Subparagraph (a) above.

(d) Except as provided in any work plan approved by U.S. EPA with Illinois EPA concurrence, any asbestos-containing material generated from demolition, reconstruction, dredging or other activities on site after June 1989 has and shall be disposed of off-site in an approved landfill.

(e) A soil cover monitoring program was developed and shall be implemented by JM as set forth in the O & M Manual, to ensure that no asbestos or asbestos-containing material reaches the surface of the cover and becomes releasable to the air in the future;

(f) Where feasible, one layer of nominal 12-inch thick riprap was placed on the interior slopes of the wastewater treatment system components, including the pumping lagoon, industrial canal, collection basin, catch basin and mixing basins. Four-inch thick bedding material was used to prevent erosion of soil beneath the riprap. All other exposed interior slopes were provided with the soil cover as described in Subparagraph (a) above, with the exception of areas used for ongoing miscellaneous waste disposal prior to completion of the remedial action. These areas were covered with 26 inches of clayey soils which shall be protected against erosion. JM shall maintain the riprap and vegetative soil cover in accordance with the O & M Manual and Phase II Remedial Work Plans.

(g) A plan was developed, and JM shall continue to implement the plan to ensure that no asbestos containing sludge is dredged from the wastewater treatment system in the future unless specified in a work plan approved by U.S. EPA with Illinois EPA concurrence. This plan includes (i) the discontinuance of systematic dredging activities in the 33-acre settling basin, and (ii) a one-time dredging of all waterways leading to the settling basin to a depth that exceeds the depth range of JM's dredging equipment. The sludge generated as a result of (ii) above was deposited in the settling basin. Any sludge removed from the settling basin in the future shall be tested for asbestos using U.S. EPA approved methods and disposed of in accordance with the Resource Conservation and Recovery Act, NESHAP and other applicable law.

(h) The north, west, and south slopes of the waste disposal area were sloped with non-asbestos-containing soil to a ratio of two horizontal to one vertical and provided with a vegetative soil cover as described in Subparagraph (a) above (see Exhibit 6). JM shall maintain the slopes and vegetative soil cover in accordance with the O & M Manual.

(i) A minimum of 24 inches of non-asbestos-containing soil was placed on top of all dikes and dike roadway on-site. On heavily used dike roadways this 24 inches included a minimum 12 inch thick, non-asbestos-containing sand layer overlain by 12 inches compacted gravel, and on lightly traveled dike roadways it included a minimum 14 inch thick, non-asbestos-containing sand layer overlain by 10 inches of compacted gravel. JM shall maintain the soil cover and gravel surfaces in accordance with the O & M Manual.

(j) A groundwater and surface water detection-monitoring system was developed and shall be operated and maintained by JM as follows:

(1) A system of monitoring wells and surface water monitoring locations has been established, approximately as indicated on Exhibit 7, consistent with the Revised (Amended) Remedial Work Plan.

(2) The wells were sampled quarterly for two years for asbestos, lead, chromium, arsenic and other organic and inorganic water quality parameters which are Hazardous Substances which can be attributed to waste disposal practices at the Facility based on a source list identifying chemicals received and used by JM at the Waukegan Plant. This source list was provided to U.S. EPA and Illinois EPA in the Revised (Amended) Remedial Work Plan and indicated materials used in each process or to produce each end product as well as material used for general applications at the Facility;

(3) Except as described below in Subparagraph (4), JM conducted further monitoring every five years for parameters determined by U.S. EPA and Illinois EPA based on existing data. Except as described below in Subparagraph (4), JM shall continue to conduct further ground water and surface water monitoring every five years for parameters set forth in the O & M Manual at the locations approximately as indicated on Exhibit 7A for at least 30 years after entry of the First Amended Consent Decree.

(4) In the event any measured groundwater quality parameter is statistically determined to exceed background (upgradient) levels or the most stringent state or federal promulgated drinking water standards (i.e., maximum contaminant levels ("MCLs") or equivalent where no MCL has been promulgated), whichever is higher, the contingency plan shall be implemented. JM retains the right to seek alternate concentration limits ("ACLs") in the event of such exceedances. The level of asbestos in groundwater which shall cause the contingency plan to go into effect shall be 7.0 million fibers per liter greater than 10 micrometers in length, or whatever groundwater standard for asbestos is promulgated and is in effect at the time any periodic review is conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). The level of arsenic which shall cause the contingency plan to go into effect shall be 50 ug/l and the level of antimony which shall cause the contingency plan to go into effect shall be 6 ug/l or whatever groundwater standard for arsenic and antimony is promulgated and is in effect at the time any periodic review is conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

(5) In the event any measured surface water quality parameter is statistically determined to exceed background levels or the most stringent state or federal

established surface water standards (i.e., Illinois Water Quality Standards and/or numerical standards established in the Great Lakes Water Quality Agreement of 1978, or equivalent where no such standards have been promulgated), whichever is higher, the contingency plan shall be implemented as approved by U.S. EPA with Illinois EPA concurrence. JM retains the right to seek alternate concentration limits ("ACLs") in the event of such exceedances. The level of asbestos and arsenic in surface water which shall cause the contingency plan to go into effect shall be 7.0 million fibers (longer than 10 micrometers in length) per liter asbestos and 50 ug/l for total arsenic or whatever applicable surface water standards for asbestos or arsenic are promulgated and are in effect at the time any periodic review is conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), including 35 IL. Admin. Code 302.504(c).

(6) Within 60 days of an exceedance as described in either paragraph (4) or paragraph (5) above, JM shall submit to U.S. EPA and Illinois EPA for approval, a contingency plan, which shall require appropriate monitoring and assessment to confirm the exceedance and identify any causes, evaluation of potential remedial alternatives, and implementation of a remedial alternative consistent with the National Contingency Plan as it may be amended. JM shall implement the contingency plan as approved by U.S. EPA with Illinois EPA concurrence.

(7) This monitoring program shall continue for a minimum of 30 years after entry of the First Amended Consent Decree and shall be conducted in accordance with the O & M Manual. After that time, U.S. EPA and the State will evaluate the need for further monitoring and require appropriate action to be taken by JM;

(k) An air monitoring program was developed and operated and shall be maintained by JM as follows:

(1) During certain remedial construction activities, air monitoring as described in Exhibit 8 was conducted;

(2) After completion of remedial construction and establishment of vegetation on the cover at the Site, JM conducted air sampling to determine concentrations of asbestos, lead and total suspended particulates ("TSP") in the air using a sufficient number of monitoring stations to thoroughly characterize background, on-site and downwind air quality. Sampling was conducted during the dry season and did not immediately follow a rainfall event, as approved by U.S. EPA and Illinois EPA technical staffs.

(3) Except as described in Subparagraph (4) below, the above sampling shall be repeated every five years.

(4) In the event concentrations of monitored substances are statistically determined to exceed applicable established ambient air quality standards (if any), or background levels, whichever are higher, then the contingency plan shall be implemented.

(5) Within 60 days of an exceedance as described in paragraph (4) above, JM shall submit to U.S. EPA and Illinois EPA a contingency plan, which shall require appropriate monitoring and assessment to confirm the exceedance and identify any causes, evaluation of potential remedial alternatives, and implementation of a remedial alternative consistent with the National Contingency Plan as it may be amended. If an exceedance is determined not to be attributable to releases from the Facility, there shall be no further action relative to such exceedance under this First Amended Consent Decree. JM shall retain the right

to apply for appropriate variances. JM shall implement the contingency plan as approved by U.S. EPA with Illinois EPA concurrence.

(6) This monitoring program shall continue for a minimum of 15 years and shall be conducted in accordance with the O & M Manual. After that time, U.S. EPA and the State shall evaluate the need for further monitoring and require appropriate action to be taken by JM.

(l) Debris from the beach next to the east end of the Facility was periodically cleaned up and shall continue to be periodically cleaned up in accordance with the Phase II Work Plans and O & M Manual.

(m) The eastern site boundary was fenced to limit access.

(n) Additional warning signs were placed along the Site perimeter.

(o) The southeast ditch (see Exhibit 6) was closed as described in Subparagraph (f) above.

(p) The active waste disposal areas (miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system) were sampled. JM provided vegetative soil cover over the sludge disposal pit in accordance with Subparagraph (a) above. JM shall maintain the vegetative soil cover on the sludge disposal pit in accordance with the O & M Manual. JM shall maintain Facility surface water at such levels to ensure that no water-covered asbestos-containing waste materials become exposed or dry out, except to the extent required by work plans approved pursuant to Paragraph 15(h), until the wastewater treatment ponds and system are closed pursuant to Paragraph 15 below. While performing activities pursuant to a work plan approved pursuant to Paragraph 15(h), JM shall maintain water levels as therein directed.

(q) The open area in the northeast corner of the miscellaneous disposal pit (see Exhibit 6) was closed as described in Subparagraph (a) above.

(r) Peripheral ditches were constructed to collect site run-off and channel it to the industrial canal.

15. (a) Phase II Remedial Work Plans are required to provide for implementation of the remedial activities in the Second ESD. According to the schedules set forth in this Paragraph, JM shall submit to U.S. EPA and Illinois EPA the Phase II Remedial Work Plans for U.S. EPA approval with Illinois EPA concurrence according to the procedures in Paragraph 15(h). The Phase II Remedial Work Plans shall provide for construction and implementation of the remedy in the Second ESD and achievement of the performance standards in Paragraph 15(a) through (g) of this First Amended Consent Decree and the Second ESD.

(b) Each of the draft Phase II Remedial Work Plans required pursuant to this paragraph below, shall include, at a minimum, the following elements:

- 30 percent design plan drawings and specifications
- Site Health and Safety Plan
- Emergency and Contingency Plan
- Quality Assurance Project Plan and Sampling and Analysis Plan for all sampling activities
- Monitoring Plan - including Air Monitoring Program
- Equipment and Personnel Decontamination Procedures
- Methodology and schedule for the Operation and Maintenance activities necessary to maintain the effectiveness of the remedial activities required in this paragraph.

- Schedule for completion of the remedial activities in this paragraph

Each of the final Phase II Remedial Work Plans shall include the same elements as the corresponding draft Phase II Remedial Work Plan, with the exception that the design plan drawings and specification shall be at the 95 percent complete level.

(c) JM shall close the miscellaneous disposal pit and the portion of the collection basin where waste materials were deposited as depicted in Exhibit A, in accordance with 35 Ill. Admin. Code Part 814, or an adjusted standard of 35 Ill. Admin. Code Part 814 as determined by the Illinois Pollution Control Board pursuant to 415 ILCS 5/28.1, and any applicable Order of the Circuit Court in Lake County in Case No. 01CH857. JM shall submit a draft Part 814 Work Plan, including any adjusted standards petition, to U.S. EPA and Illinois EPA on or before July 11, 2003. Within 30 days of JM's receipt of U.S. EPA and Illinois EPA's comments on the draft Part 814 Work Plan, including any adjusted standards petition, JM shall either file a petition with the Illinois Pollution Control Board for an adjusted standard to 35 Ill. Admin Code 814 for the closure of the miscellaneous disposal pit or submit a draft Phase II Work Plan providing for final closure of the miscellaneous disposal pit in accordance with 35 Ill. Adm. Code Part 814 to U.S. EPA and Illinois EPA for approval. In the event that JM submits an adjusted standards petition to the Pollution Control Board, JM shall submit a draft Phase II Remedial Work Plan to U.S. EPA and Illinois EPA within 60 days after the Illinois Pollution Control Board's final decision on JM's adjusted standards petition, which shall provide for closure of the miscellaneous disposal pit and the portion of the collection basin where waste materials were deposited in compliance with 35 Ill. Admin. Code Part 814 or an adjusted standard as determined by the Illinois Pollution Control Board. Upon written notification by

U.S. EPA, or entry of this First Amended Consent Decree, whichever is later, JM shall implement the Final Phase II Remedial Work Plan for the miscellaneous disposal pit as approved or modified pursuant to the procedures in Paragraph 15(h) according to the schedule in the Final Phase II Remedial Work Plan.

(d) By September 30, 2003, JM shall submit a draft Phase II Remedial Work Plan for the waste treatment ponds to U.S. EPA and Illinois EPA, which shall provide for implementation of the following remedial activities:

(1) JM shall close the wastewater treatment ponds, which include, but is not limited to, the paper mill ditch, catch basin, mixing basin, and the settling basin.

(2) JM closure activities shall include: (i) stopping the pumping of storm water runoff into the wastewater treatment ponds and system; and (ii) placing and maintaining a vegetated soil cover over the closed wastewater treatment ponds and system. The vegetated soil cover shall consist of a minimum of 24 inches of compacted non-asbestos-containing soils with the following minimum composition: six inches of sand overlain by 15 inches of native clayey soil, three inches of topsoil and a vegetation cover. The six-inch sand layer may be replaced with eight inches of clayey soil (making a total of 23 inches of clay). In the draft Phase II Work Plan, JM may submit a petition to U.S. EPA and Illinois EPA in support of an alternative cover over the settling basin instead of the vegetated soil cover. JM's petition shall demonstrate that such alternative cover is as protective of human health and the environment as the vegetated soil cover. U.S. EPA, with the concurrence of Illinois EPA, shall determine in its unreviewable discretion whether to approve the use of an alternative cover. JM shall place and maintain the alternative cover over the settling basin if approved by U.S. EPA

with Illinois EPA concurrence in the Final Phase II Work Plan.

(3) During wastewater treatment system closure activities, JM shall conduct surface water monitoring for surface water quality parameters, including but not limited to asbestos, antimony and arsenic, at the locations set forth in Exhibit 7A in accordance with the Final Phase II Work Plan. JM shall not exceed asbestos levels of 7.0 million fibers per liter greater than 10 micrometers in length, arsenic levels of 50 ug/l or antimony levels of 6 ug/l at the sampling points in Exhibit 7A. If JM exceeds these levels during the implementation of wastewater treatment system closure activities, JM shall implement the contingency plan set forth in the Final Phase II Remedial Work Plan. After certification of construction of the vegetated soil cover in Paragraph 15(d)(2), JM shall continue to conduct the surface water monitoring and implement the contingency plan requirements set forth in Paragraph 14(j)(3),(5)(6) and (7).

(4) Upon notification by U.S. EPA, or entry of this First Amended Consent Decree, whichever is later, JM shall implement the Final Phase II Remedial Work Plan for the waste treatment ponds and system as approved or modified pursuant to Paragraph 15(h) according to the schedule in the Final Phase II Remedial Work Plan

(e) Within 150 days of notification by U.S. EPA of the completion of the drainage of the settling basin, JM shall submit a draft Phase II Remedial Work Plan for the collection basin, industrial canal and pumping lagoon to U.S. EPA and Illinois EPA, which shall provide for implementation of the following remedial activities:

(1) JM sampled the sediments in the water filled portion of the collection basin, industrial canal, and the pumping lagoon for asbestos and found levels of

asbestos exceeding 1%. JM shall implement the following actions: (i) cap or remove the asbestos-containing sediments of these waterways in compliance with federal and state laws; (ii) ensure that the soil cover on the side slopes of the industrial canal, pumping lagoon and borrow pit remain protected from erosion; (iii) implement a program to pick up visible debris in these waterways; and (iv) keep the outlet pipe from the industrial canal to Lake Michigan open and free of debris, except as provided by a contingency plan approved by U.S. EPA with Illinois EPA concurrence.

(2) During implementation of the remedial activities in Paragraph 15(e)(1)(i), JM shall conduct surface water monitoring for surface water quality parameters, including but not limited to asbestos, antimony and arsenic in accordance with the Final Phase II Remedial Work Plan. JM shall not exceed asbestos levels of 7.0 million fibers per liter greater than 10 micrometers in length, arsenic levels of 50 ug/l or antimony levels of 6 ug/l at the locations identified in the Phase II Work Plan, including the Industrial Canal pipe connection to Lake Michigan and the northern boundary of the Facility including the Illinois Nature Preserve. If JM exceeds these levels during implementation of the remedial activities in Paragraph 15(e)(1)(i), JM shall implement the contingency plan set forth in the Final Phase II Remedial Work Plan. After certification of construction of the remedial activities in Paragraph 15(e)(1)(i), JM shall continue to conduct the surface water monitoring and implement the contingency plan requirements set forth in Paragraph 14(j)(3),(5),(6) and (7). JM shall implement any additional surface water monitoring required by U.S. EPA with the concurrence of Illinois EPA subject to dispute resolution procedures of Section XII.

(3) JM shall implement the Final Phase II Remedial Work Plan for the

collection basin, industrial canal and pumping lagoon as approved or modified pursuant to Paragraph 15(h) according to the schedule in the Final Phase II Remedial Work Plan.

(f) JM shall provide for operation and maintenance of the closed miscellaneous disposal pit, collection basin, wastewater treatment ponds, the industrial canal, pumping lagoon and borrow pit for a minimum of 30 years after completion of the construction. After 30 years, U.S. EPA and the State shall evaluate the need for further operation and maintenance and JM shall implement any action required by U.S. EPA subject to the dispute resolution procedures of Section XII;

(g) If any new areas of asbestos-containing waste material are discovered within the Facility after the lodging of this First Amended Consent Decree, JM shall notify U.S. EPA and Illinois EPA within 24 hours of the discovery. Within 60 days of discovery, JM shall submit a Phase II work plan to U.S. EPA and Illinois EPA to remediate these areas. The additional Phase II Work Plan shall require: 1) the complete removal of asbestos-containing waste materials and backfill with clean material; 2) grading and covering asbestos-containing waste materials with a vegetated soil cover as defined in Paragraph 4(x) and the imposition of land use restrictions as specified in Paragraph 23 and Paragraph 26; or 3) grading and covering asbestos-containing materials with a cover that is as protective of human health and the environment as the vegetated soil cover as defined in Paragraph 4(x) and the imposition of land use restrictions as specified in Paragraph 23 and Paragraph 26. JM shall implement the Phase II Work Plan as approved or modified pursuant to Paragraph 15(h) according to the schedule therein.

(h) Approval of Plans and Other Submissions: Within 30 days of receipt of

the Draft Phase II Remedial Work Plan or other draft plan, draft report or draft item, the Illinois EPA shall review and provide its comments on the item to U.S. EPA. Within 14 days of receipt of U.S. EPA's comments on the Draft Phase II Remedial Work Plan or other draft item, Illinois EPA shall concur on U.S. EPA's comments or forfeit said right. U.S. EPA, after review of each draft Phase II Remedial Work Plan (30% design plan drawings and specifications), other draft plan, draft report or draft item required to be submitted pursuant to this First Amended Consent Decree and concurrence by Illinois EPA, will notify JM in writing of any conditional approval, approval, approval with modifications or disapproval of the Draft Phase II Remedial Work Plan, draft plan, draft report or draft item. Upon notification of U.S. EPA, JM shall make all required modifications in the Draft Phase II Remedial Work Plan, draft plan, draft report or draft item and submit a Final Phase II Remedial Work Plan (95% design plan drawings and specifications), final plan, final report or final item to U.S. EPA and Illinois EPA within 30 days of receipt of U.S. EPA notice, subject to the dispute resolution provisions of Section XII of this First Amended Consent Decree with respect to the modifications or conditions made by U.S. EPA. Within 14 days of receipt of a Final Phase II Remedial Work Plan (95% design plan drawings and specifications), other final plan, final report or final item, the Illinois EPA shall provide its comments on the final item to U.S. EPA. Within 14 days of receipt of U.S. EPA's comments on the Final Phase II Remedial Work Plan or other final item, Illinois EPA shall concur on U.S. EPA's comments or forfeit said right. U.S. EPA, after review of each Final Phase II Remedial Work Plan (95% design plan drawings and specifications), other final plan, final report or final item required to be submitted pursuant to this Consent Decree and concurrence by Illinois EPA, will notify JM in writing of any conditional approval, approval, approval with modifications or

disapproval of the Final Phase II Remedial Work Plan, final plan, final report or final item. Upon receipt of written approval, approval upon conditions, or approval with modification by U.S. EPA on any Final Phase II Remedial Work Plan, final plan, final report, or other final item, or entry of this First Amended Consent Decree, whichever is later, JM shall immediately proceed to take any action required by the Final Phase II Remedial Work Plan, final plan, final report, or other final item, as approved or modified by U.S. EPA in accordance with the schedules approved therein, subject only to JM's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. All approved Final Phase II Remedial Action Work Plans, approved final plans, approved final reports, and other approved items required to be submitted under this First Amended Consent Decree, shall be incorporated into and be enforceable under this First Amended Consent Decree.

16. All instructions by the U.S. EPA On-Scene Coordinator or Remedial Project Manager in connection with the work to be performed at the Facility which are consistent with the terms of this First Amended Consent Decree and with the National Contingency Plan, 40 C.F.R. Part 300, shall, whenever feasible, be provided in writing and be binding upon JM, subject to the dispute resolution provisions of Section XII.

VI. U.S. EPA PERIODIC REVIEW

17. In 1992, JM completed the remedial activities in the Original Consent Decree, except for those areas identified in the First Explanation of Significant Differences. Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), U.S. EPA conducted a review of the remedial activities conducted under the Original Consent Decree in 1997 and the Illinois EPA was

provided with an opportunity for review and comment. U.S. EPA is currently conducting a periodic review of the remedial activities conducted under the Original Consent Decree, which commenced in 2002, and will provide the Illinois EPA with an opportunity for review and comment on the five year review.

18. Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), U.S. EPA shall review the Remedial Action/Work at least every five years after the 2002 review, to assure that human health and the environment are being protected by the Remedial Action/Work being implemented. Pursuant to the O & M Plan and as requested by U.S. EPA, JM shall conduct studies and investigations within the Facility boundaries, in order to permit U.S. EPA to conduct reviews of the Remedial Action/Work under Section 121(c) of CERCLA. If U.S. EPA, determines that the Remedial Action/Work is not protective of human health and the environment, U.S. EPA may select further response actions within the Facility boundaries in accordance with the requirements of CERCLA and the NCP. JM and Illinois EPA shall be given the opportunity to comment upon any such further response actions within the Facility boundaries proposed by U.S. EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record. If U.S. EPA selects further response actions within the Facility boundaries, JM shall undertake such further response actions to the extent that the reopener conditions in Paragraph 60(a) or Paragraph 60(b) are satisfied. JM may invoke the procedures set forth in Section XII (Dispute Resolution) to dispute (1) U.S. EPA's determination that the reopener conditions of Paragraph 60(a) or Paragraph 60(b) of Section XVI are satisfied, (2) U.S. EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) U.S. EPA's selection of further response

actions within the Facility boundaries. Disputes pertaining to whether the Remedial Action is protective or to U.S. EPA's selection of further response actions within the Facility boundaries shall be resolved pursuant to Paragraphs 43(c) and 44(c) with review on the administrative record. If JM is required to perform the further response actions within the Facility boundaries, JM shall submit a plan for such work to U.S. EPA for approval in accordance with the procedures set forth in Paragraph 15(h) and shall implement the plan approved by U.S. EPA in accordance with the provisions of this First Amended Consent Decree. U.S. EPA may select and require implementation of any response action for any area outside the Facility boundaries and such decisions are not subject to this Consent Decree, including Section XII (Dispute Resolution).

VII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

19. JM shall use quality assurance, quality control, and chain of custody procedures for all data gathered under this First Amended Consent Decree in accordance with U.S. EPA's "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by U.S. EPA to JM of such amendment. Sampling data generated consistent with the Quality Assurance Project Plan ("QAPP") shall be admissible, without objection, in any proceeding under this Decree. JM shall ensure that U.S. EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by JM in implementing this First Amended Consent Decree. JM shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for

Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

20. JM shall make available to U.S. EPA and Illinois EPA the results of all sampling, tests and other data it generates during implementation of this First Amended Consent Decree. JM shall submit these results in the monthly progress reports described in Section IX hereof. Upon request by U.S. EPA, JM shall submit the required data or report in electronic format according to U.S. EPA Region 5's electronic format.

21. Upon request, each of the Parties shall allow split or duplicate samples to be taken of any samples taken by the other Parties during implementation of this First Amended Consent Decree. JM shall notify U.S. EPA and Illinois EPA not less than 14 days in advance of any sample collection or related activity. JM shall have the right to observe activities of U.S. EPA and State of Illinois employees, contractors and consultants on the Facility.

VIII. FACILITY ACCESS AND INSTITUTIONAL CONTROLS.

22. Access to Property within the Facility owned by JM. JM shall provide access to the portion of the Facility owned by JM to U.S. EPA and State employees, contractors, agents, and consultants at all reasonable times, and shall permit such persons to be present and move freely about the area for the purpose of conducting any activity relating to this First Amended Consent Decree, including, but not limited to, monitoring the Work, taking samples, verifying any data or information submitted to U.S. EPA or the State, conducting investigations, obtaining

samples, assessing the need for, planning, or implementing additional response actions at or near the Facility, assessing JM's compliance and determining whether the Site is being used in a manner that is prohibited or restricted under this First Amended Consent Decree. In the event the U.S. EPA or Illinois EPA or their contractors, agents or consultants expect to conduct a sampling event on-site, they shall provide JM reasonable advance notice. U.S. EPA and Illinois EPA and their contractors, agents or consultants shall present appropriate credentials upon request.

23. Non-Interference With Remedy. As of the date of lodging of this First Amended Consent Decree, JM agrees that it will not use the Facility, or any other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the Remedial Action without the prior approval of U.S. EPA, with Illinois EPA concurrence. Such restrictions include, but are not limited to the following:

(a) Disturbance of Cover. Except as necessitated by compliance with the O & M Manual or other work plan approved or modified by U.S. EPA with Illinois EPA concurrence and except as provided in Subparagraph (g) below, no action shall be taken to excavate, drill or intrude into, penetrate or otherwise disturb the Facility cover designated in Exhibit 10, which includes the vegetated soil cover, asphalt cover and riprap, or the soils below such vegetated soil cover or asphalt cover or riprap.

(b) Maintenance of Water Levels. The Facility surface water shall be maintained at such levels to ensure that no water-covered asbestos-containing waste materials become exposed or dry out until closure of the wastewater ponds and system pursuant to Paragraph 15 above, except as authorized by an approved work plan pursuant to Paragraph 15(h).

(c) Interference with Remedy. There shall be no interference with the construction, operation, maintenance, monitoring, efficacy or physical integrity of any component, structure, or improvement resulting from or relating to the remedial action for the Facility. No action shall be taken which would cause Waste Materials that have been covered to become exposed except as authorized by a work plan approved by U.S. EPA with Illinois EPA concurrence.

(d) Operation and Maintenance Program. To ensure the long-term integrity of the vegetated soil cover, asphalt covers and riprap and to minimize exposure of Waste Materials at the Facility, JM shall meet the requirements in the O & M Manual for the Facility, as well as all subsequent amendments, modifications or revisions to the O & M Manual approved pursuant to Paragraph 15(h). JM shall meet the requirements in the amendment to the O & M Manual for operation and maintenance of the closed wastewater ponds and treatment system.

(e) Land Uses. The Facility shall not be used for any of the following purposes:

- (i) Residential, including any dwelling units and rooming units, mobile home or factory built housing, camping facilities, hotels, or other unit constructed or installed for occupancy on a 24-hour basis;
- (ii) A hospital for humans;
- (iii) A public or private school;
- (iv) A day care center for children;

- (v) Any purpose involving occupancy on a 24-hour basis;
- (vi) Any use that would disturb or penetrate the Facility cover as set forth in (a) above or interfere with the remedy as set forth in (d) above (e.g. construction of buildings).

No change shall be made to the land use restrictions in this Subparagraph, except pursuant to Subparagraph (g) below, and except with the consent of any other federal, state or local governmental agencies having jurisdiction over the proposed activities, and subject to applicable statutes, ordinances, rules and regulations in effect at such time.

(f) Ground Water Uses. No activities shall be conducted on the Facility depicted in Exhibit 3 or on adjacent property owned by Johns Manville that is enrolled in the State of Illinois Site Remediation Program and is depicted in Exhibit 5 ("SRP Property") that extract, consume, or otherwise use any groundwater from the property, nor shall any well be constructed on the Facility or the SRP Property for purposes other than ground water monitoring, unless approved in a work plan pursuant to Paragraph 15 (h).

(g) Modification of Restrictions. U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate the above restrictions in whole or in part, in writing, as authorized by law. If requested by the U.S. EPA, with the concurrence of Illinois EPA, such writing will be executed by JM in recordable form and recorded with the Recorder of Deeds, Lake County, Illinois. JM may modify or terminate the above restrictions in whole or in part, in writing, with the prior written approval of U.S. EPA, with the concurrence of Illinois EPA. JM may seek to modify or terminate, in whole or in part, the restrictions by submitting to both U.S. EPA and the Illinois EPA, for approval, a written application that identifies each such restriction to be

terminated or modified, describes the terms of each proposed modification and includes proposed revision(s) to the Notice described in Paragraph 25 and proposed revision(s) to the environmental easement and restrictive covenants described in Paragraph 26. Each application for termination or modification of any restriction shall include a demonstration that the requested termination or modification will not interfere with, impair or reduce: (i) the effectiveness of any remedial measures undertaken pursuant to this First Amended Consent Decree; (ii) the long term protectiveness of the Remedial Action; or (iii) protection of human health and the environment. If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (i) through (iii), above, U.S. EPA will notify JM in writing. If U.S. EPA does not respond in writing to a request to change land use within 90 days of its receipt of that request, unless JM agrees to extend this period beyond 90 days, U.S. EPA may be deemed to have denied the request and JM may send a notice of dispute pursuant to Paragraph 42 of Section XII of the First Amended Consent Decree. If a modification to or termination of a land or groundwater restriction is approved by U.S. EPA, with the concurrence of Illinois EPA, JM shall record the revised Notice and the revised environmental easement and restrictive covenants as approved by U.S. EPA, with the concurrence of Illinois EPA, with the Recorder of Deeds, Lake County, Illinois.

(h) Impact on State's Authorities as to Nature Preserve. Nothing in the First Amended Consent Decree is in any way meant, or shall be interpreted to affect, any legal authorities the State of Illinois may have regarding the nature preserve to the north of the Facility.

24. Notice: With respect to any property owned or controlled by JM that is located

within the Facility, within 30 days after the entry of this First Amended Consent Decree, JM shall file the Notice set forth in Exhibit 11 with the Recorder of Deeds, Lake County, State of Illinois. This Notice provides all successors-in-title with notice that the property is part of an NPL Site that was used for the disposal of asbestos-containing waste material, that U.S. EPA selected a remedy for the NPL Site and that JM entered into a Consent Decree and a First Amended Consent Decree in the case of *United States and State of Illinois v. Manville Sales Corporation*, Civil Action No. 88C 630 (N.D. Ill) requiring implementation of the remedy as well as land and water use restrictions to maintain the integrity and protectiveness of the remedy. JM shall provide U.S. EPA and the State with a certified copy of the recorded Notice within 10 days of recording such Notice. With respect to JM's former manufacturing facility depicted in Exhibit 5, which is enrolled in the State of Illinois Site Remediation Program, within 30 days after the entry of this First Amended Consent Decree, JM shall file the Notice set forth in Exhibit 12 with the Recorder of Deeds, Lake County, State of Illinois, which provides all successors-in-title with notice that the SRP property is subject to groundwater restrictions and that Site/Y, Site Z and the western parking lot portions of the SRP property are also subject to certain land use restrictions. JM shall provide U.S. EPA and the State with certified copies of the recorded Notices within 10 days of recording such Notices.

25. At least 45 days prior to the conveyance of any interest in property located within the Facility including, but not limited to, fee interests, leasehold interests, and mortgage interests, JM shall give the grantee (i) written notice of this First Amended Consent Decree, and (ii) a copy of the proposed Deed with Reservation of Environmental Easement and Declaration of Restrictive Covenants referenced in the following paragraphs that will reserve a right of access

and the right to enforce restrictions on the land/interest to be conveyed. In the event of any such conveyance, JM's obligations under this First Amended Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls pursuant to this Section, shall continue to be met by JM unless otherwise agreed to by the United States and State of Illinois in writing. In no event shall the conveyance release or otherwise affect the liability of JM to comply with all provisions of this First Amended Consent Decree. If the United States and the State of Illinois approve in writing, the grantee, as JM's contractor, may perform some or all of the Work under this First Amended Consent Decree.

26. Conveyance of Property within the Facility owned by JM - Reservation of Environmental Easement and Declaration of Restrictive Covenants

(a) If JM conveys any interest in the property delineated in Exhibit 10, or any portion thereof owned by JM, JM shall reserve an environmental easement and restrictive covenants, running with the land in the conveyance instrument that (i) reserves the right of access for the purpose of conducting any activity related to this First Amended Consent Decree, and (ii) reserves the right to enforce the land/water use restrictions listed in Paragraph 23. JM shall reserve the access right and the right to enforce the land/water use restrictions for (i) JM, (ii) the United States, on behalf of U.S. EPA, and its representatives, as a third party beneficiary, and (iii) the State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary.

(b) At least 45 days prior to such conveyance, JM shall:

(1) give written notice to U.S. EPA and the State of the proposed

conveyance, including the name and address of the grantee, and the date on which notice of the First Amended Consent Decree and a copy of the draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants was provided to the grantee.

(2) submit to U.S. EPA and the State for review and approval with respect to such conveyance:

(i) a draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants ("Deed") that reserves the environmental easement/restrictive covenants, in substantially the form attached hereto as Exhibit 13, prepared in contemplation of the proposed conveyance (the draft model deed attached as Exhibit 10 is for a fee conveyance, but if the estate being conveyed is something other than a fee, such as a lease, easement or mortgage, the instrument should be modified accordingly) that is in recordable form and is enforceable under the laws of the State of Illinois; and

(ii) a current title insurance commitment or some other evidence of title acceptable to U.S. EPA and the State, which shows title to the land described in the Deed to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by U.S. EPA and the State or when, despite best efforts, JM is unable to obtain release or subordination of such prior liens or encumbrances).

(c) After U.S. EPA and the Illinois EPA, approve and accept the draft Deed (or other instrument of conveyance, including any lease) and the title evidence, JM may convey the interest in property pursuant to the approved Deed (or other instrument of conveyance), provided a title update determines that nothing has occurred between the effective date of the commitment and the date of recording to affect the title adversely. JM shall record such Deed

(or other instrument of conveyance) with the Recorder of Deeds of Lake County, State of Illinois. Within 30 days of recording the Deed (or other instrument of conveyance), JM shall provide U.S. EPA and the Illinois EPA with a final title insurance policy, or other final evidence of title acceptable to U.S. EPA and the Illinois EPA, and a certified copy of the original Deed (or instrument of conveyance) showing the clerk's recording stamps.

27. SRP Property Owned by JM - Reservation of Environmental Easement and Declaration of Restrictive Covenants

(a) If JM conveys any interest in the SRP Property, or any portion thereof owned by JM, JM shall reserve an environmental easement and a restrictive covenant running with the land in the conveyance instrument that (i) reserves the right of access for the purpose of determining compliance with this First Amended Consent Decree and for conducting periodic reviews of the protectiveness of the Remedial Action, and (ii) reserves the right to enforce the groundwater use restrictions listed in Paragraph 23(f). JM shall reserve the access right and the right to enforce the groundwater use restrictions for (i) JM, (ii) the United States, on behalf of U.S. EPA, and its representatives, as a third party beneficiary, and (iii) the State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary. In addition, if JM conveys any interest in Site Y, Site Z or the western parking lot portion of the SRP Property as identified in Exhibit 5, JM shall reserve an environmental easement and restrictive covenants running with the land in the conveyance instrument that (i) reserves the right to enforce land use restrictions with respect to interference with the asphalt cover on those parcels. JM shall reserve the access right and the right to enforce the land/water use restrictions for (i) JM, (ii) the United States, on behalf of U.S. EPA, and its representatives, as a third party beneficiary, and (iii) the

State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary.

(b) At least 45 days prior to such conveyance, JM shall:

(1) give written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the First Amended Consent Decree, access easement, and a copy of the draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants was given to the grantee.

(2) submit to U.S. EPA and the State for review and approval with respect to such conveyance:

(i) a draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants ("Deed") that reserves the environmental easement and restrictive covenants, in substantially the form attached hereto as Exhibit 14, prepared in contemplation of the proposed conveyance (the draft Deed attached as Exhibit 14 is for a fee conveyance, but if the estate being conveyed is something other than a fee, such as a lease, easement or mortgage, the instrument should be modified accordingly) that is in recordable form and that is enforceable under the laws of the State of Illinois; and

(ii) a current title insurance commitment or some other evidence of title acceptable to U.S. EPA and the State, which shows title to the land described in the Deed to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by U.S. EPA and the State or when, despite best efforts, JM is unable to obtain release or subordination of such prior liens or encumbrances).

(3) After U.S. EPA's and the State's approval and acceptance of the draft Deed (or other instrument of conveyance, including a lease) and the title evidence, JM may

convey the interest in property pursuant to the approved Deed (or other instrument of conveyance), provided a title update determines that nothing has occurred between the effective date of the commitment and the date of recording to affect the title adversely. JM shall record such Deed (or other instrument of conveyance) with the Recorder of Deeds of Lake County, State of Illinois. Within 30 days of recording the Deed (or other instrument of conveyance), JM shall provide U.S. EPA and the Illinois EPA with a final title insurance policy, or other final evidence of title acceptable to U.S. EPA and the Illinois EPA, and a certified copy of the original Deed (or instrument of conveyance) showing the clerk's recording stamps.

(c) JM agrees to conduct operation and maintenance of the asphalt cap on Site Y, Site Z and the western parking lot of the SRP Property as identified and approximately depicted in Exhibit 5 in accordance with the O & M Plan. Pursuant to Paragraph 23(g), JM may petition U.S. EPA and the State for termination of the land use restrictions on Site Y, Site Z and the western parking lot of the SRP Property if JM imposes land use restrictions on Site Y, Site Z and the western parking lot as part of any environmental land use control and/or no further action letter recorded as part of the SRP program.

28. Access/Agreements/Easement By Other Persons. For any property where access is needed to implement this First Amended Consent Decree; and such property is owned or controlled by persons other than JM, JM shall use best efforts to secure from such persons, an agreement to provide access thereto for JM, its agents and contractors, as well as for the United States on behalf of U.S. EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this First Amended Consent Decree including, but not limited to, those activities listed in Paragraph 22 of this First Amended

Consent Decree within 30 days of the date such access is determined to be necessary.

29. For purposes of this Section, "best efforts" includes paying reasonable sums of money in consideration of access. If JM is unable to obtain the access agreement(s) required under Paragraph 28, JM shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that JM has taken in attempting to comply with this Section. The United States may in its unreviewable discretion and as it deems appropriate, assist JM in obtaining such access. JM shall reimburse the United States in accordance with the procedures in Section XIV (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining such access, including, but not limited to the cost of attorney time and the amount of monetary consideration paid.

30. If U.S. EPA or Illinois EPA determine that additional land/water restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the Remedial Action, ensure its integrity and protectiveness, or ensure non-interference with it, JM shall cooperate with U.S. EPA's and the Illinois EPA's efforts to secure such controls.

31. JM shall amend the O & M Manual to include an annual inspection of the institutional controls at the Facility and the submittal of an annual written certification to U.S. EPA and the State that the vegetative soil cover, riprap, asphalt and environmental easement/restrictive covenants set forth in this Section remain in place and are effective. JM has the responsibility to monitor, maintain and enforce the land use restrictions in Paragraphs 26, 27 and 28 and Exhibits 13 and 14.

IX. REPORTING REQUIREMENTS

32. JM shall provide to U.S. EPA and Illinois EPA written monthly progress reports which: (a) describe the actions which have been taken toward achieving compliance with this First Amended Consent Decree during the previous month, as well as such actions; sample collection, data and plans which are scheduled for the next month; (b) include all results of sampling and tests and all other data received by JM during the previous month; (c) include all plans and procedures completed under the O&M Plan and the Phase II Remedial Work Plans during the previous month; and (d) include a statement of the escrow account balances and other financial assurances required by Section IV. These progress reports are to be submitted to U.S. EPA and Illinois EPA by the tenth day of every month following the effective date of this First Amended Consent Decree. Upon request of U.S. EPA, JM shall submit data or reports electronically to U.S. EPA according to U.S. EPA formatting requirements.

33. Upon the occurrence of any event during performance of the remedial action which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, JM shall promptly orally notify the U.S. EPA representative or, in the event of his unavailability, the Emergency Response Unit, Region V, United States Environmental Protection Agency, in addition to the reporting and other procedures required by Section 103. Such events shall be reported in the required monthly progress reports.

34. If the date for submission of any item or notification required by this First Amended Consent Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day.

X. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

35. U.S. EPA has designated a Remedial Project Manager ("RPM") and Illinois EPA has designated a Project Coordinator for the Facility. JM has also designated a Project Coordinator who has primary responsibility for implementation of the Work at the Facility. U.S. EPA may designate other representatives, including U.S. EPA and Illinois EPA employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this First Amended Consent Decree. The RPM shall have the authority lawfully vested in an RPM by the NCP. Except as specifically provided in the First Amended Consent Decree, communications between and among the Parties with respect to implementation of the Work shall be between the Project Coordinators and the RPM.

36. The RPM and Project Coordinators are identified below:

Brad Bradley
Remedial Project Manager
Mail Code SR-6J
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604

Sandra Bron
Illinois Environmental Protection Agency
Federal Site Remediation Section
Division of Remediation Management
Bureau of Land
1021 N. Grand Ave East
Springfield, Illinois 62794-92

Denny Clinton
Johns Manville
1871 N. Pershing Road
Waukegan, IL 60087

If the Project Coordinator or RPM initially designated is changed, the identity of the successor

will be provided to the other Parties at least five working days before the change is made.

XI. FORCE MAJEURE

37. "Force Majeure" for purposes of this First Amended Consent Decree is defined as any event arising from causes beyond the control of JM or any entity controlled by JM which delays or prevents the performance of any obligation under this First Amended Consent Decree. "Force Majeure" shall not include contractor or subcontractor misfeasance, malfeasance or nonfeasance, increased costs or expenses, or non-attainment of the goals and standards set forth in Section V hereof and the O&M Plan.

38. When circumstances are occurring or have occurred which may preclude compliance with the schedule set forth in this First Amended Consent Decree or the O&M Plan or the Phase II Remedial Work Plans, whether or not caused by a "force majeure" event, JM shall promptly notify the RPM and the State Project Coordinator or their alternates by telephone within 24 hours. Within five days of the event which JM contends is responsible for the delay, JM shall supply to U.S. EPA in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by JM to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give such notice and explanation in a timely manner shall constitute a waiver-of any claim of force majeure.

39. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall modify the O&M Plan or the Phase II Remedial Work Plans to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay.

40. If U.S. EPA and JM cannot agree whether the reason for the delay was a "force majeure" event, or whether the duration of the delay is or was warranted under the circumstances, the Parties shall resolve the dispute according to the dispute resolution procedures in Section XII herein. JM has the burden of proving force majeure as a defense to noncompliance with this Decree.

XII. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this First Amended Consent Decree, the dispute resolution procedures of this Section are available and shall be the exclusive mechanism to resolve all disputes arising under this First Amended Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of JM that have not been disputed in accordance with this Section.

42. **Informal Negotiations.** Any dispute that arises under or with respect to this First Amended Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

43. **Formal Dispute Resolution**

(a) In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by U.S. EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, JM invokes the formal dispute resolution procedures of this Section by serving on the U.S. EPA

and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by JM. The Statement of Position shall specify JM's position as to whether formal dispute resolution should proceed under Subparagraph (c) or (d) of this paragraph.

(b) Within 20 days after receipt of JM's Statement of Position, U.S. EPA and the State, if applicable, will serve on JM its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by U.S. EPA or the State. These Statements of Position shall also specify the U.S. EPA or State position as to whether formal dispute resolution should proceed under Subparagraph (c) or (d) of this paragraph. If there is disagreement on this issue, the dispute shall proceed under the subparagraph determined by U.S. EPA to be applicable. However if JM ultimately appeals to the Court to resolve the dispute, the Court shall determine which subparagraph is applicable. Within 10 days after receipt of the U.S. EPA Statement of Position and the State's Statement of Position, if applicable, JM may submit a Reply.

(c) Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action, and all other disputes that are accorded review on the administrative record under applicable provisions of administrative law, shall be conducted pursuant to the procedures in this Subparagraph. For purposes of this Subparagraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans or any other items requiring approval by U.S. EPA, and the adequacy of performance of response actions taken pursuant to this First Amended Consent

Decree. Nothing in this First Amended Consent Decree shall be construed to allow any dispute by JM regarding the validity of the ROD as Modified. In the case of disputes under this Subparagraph (c), an administrative record of the dispute shall be maintained by U.S. EPA and shall contain all Statements of Position, including supporting documentation, submitted by the parties to the dispute. The Director of the Superfund Division, U.S. EPA Region 5 will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding on JM, subject only to the right to seek judicial review pursuant to Paragraph 44 (a)-(c).

(d) In the case of disputes that pertain neither to the selection or adequacy of any response action or are not otherwise accorded review on the administrative record under applicable provisions of administrative law, following receipt of the parties' Statements of Positions, the Director of the Superfund Division, U.S. EPA Region 5, will issue a final decision resolving the dispute, which shall be binding on JM, subject to the right to seek judicial review.

44. Judicial Review

(a) Any administrative decision made by the Director of the Superfund Division, U.S. EPA Region 5 pursuant to the preceding paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by JM with the Court and served on all parties to the dispute within 10 days of receipt of U.S. EPA's final decision.

(b) The motion for judicial review shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this First Amended Consent Decree. The United States may file a response to JM's motion.

(c) In proceedings on any dispute governed by Subparagraph 43 (c), JM shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of U.S. EPA's decision shall be on the administrative record.

(d) Judicial review of any dispute governed by Subparagraph 43(d), shall be governed by applicable provisions of law.

45. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of JM under this First Amended Consent Decree not directly in dispute, unless U.S. EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this First Amended Consent Decree. In the event that JM does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XIII. RETENTION AND AVAILABILITY OF RECORDS

46. JM shall make available to U.S. EPA and Illinois EPA, and shall retain, during the pendency of this First Amended Consent Decree, and for a period of ten years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of its contractors and subcontractors, which relate to the performance of this First Amended Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by JM, or on JM's behalf, with respect to the implementation of this First Amended Consent Decree. After the ten year

period of document retention, JM shall notify U.S. EPA, Illinois EPA and U.S. DOJ at least 90 calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or Illinois EPA, JM shall relinquish custody of the documents to U.S. EPA or Illinois EPA.

47. JM may assert business confidentiality claims covering part or all of the information submitted under this First Amended Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R. § 2.203(b) and applicable State law. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by Illinois EPA, afforded protection under State law. If no such claim accompanies the information when it is submitted to the U.S. EPA and the State, the public may be given access to such information without further notice to JM.

48. JM may assert that certain documents, records or information are privileged under the attorney-client privilege or any other privilege recognized under federal law. However, no records, documents or information created or generated pursuant to the requirements of this First Amended Consent Decree shall be withheld on the grounds that they are privileged.

XIV. REIMBURSEMENT OF RESPONSE COSTS

49. JM has paid \$153,114.15 to the EPA Hazardous Substances Response Trust Fund for reimbursement of certain response costs incurred by the United States prior to entry of the Original Consent Decree. JM has also paid certain response costs incurred by the United States at the Facility subsequent to entry of the Original Consent Decree. By November 15, 2003, JM shall pay to U.S. EPA by certified or cashiers check to the address in Paragraph 51, the outstanding balance including interest that has accrued on certain oversight billings under the

Original Consent Decree, in the amount of \$171 on bill #2T067X, \$4,496 on bill #0T113A, and \$12,362 on bill #9T147A. JM shall pay all unreimbursed response costs incurred by the United States in connection with the Facility between entry of the Original Consent Decree and the entry of the First Amended Consent Decree, which are not inconsistent with the NCP. Such response costs shall include all direct and indirect costs incurred by the United States in overseeing, implementing, enforcing and amending the Original Consent Decree.

50. JM shall pay to U.S. EPA all response costs incurred by the United States after entry of the First Amended Consent Decree in connection with the Facility, which are not inconsistent with the NCP. Such response costs shall include all direct and indirect costs incurred by the United States in overseeing, implementing and enforcing the First Amended Consent Decree, including the environmental easement/restrictive covenants in Section VIII.

51. Payments shall be made by JM on a periodic basis and within 30 days of the submission of an itemized cost statement by the United States. Payments shall be made by certified or cashier's check payable to EPA Hazardous Substance Superfund and forwarded to the following address:

Environmental Protection Agency, Region 5
Attention: Program Accounting and Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

The checks shall reference the name and address of the party making the payment, the EPA Site/Spill number O5A5, and the DOJ case number 90-11-1-7B. Notice that the payment has been made is also to be sent to the United States and to U.S. EPA, in accordance with Section XVIII (Notices). In the event that a payment is not made within 30 days of submission of U.S.

EPA's itemized cost statement, JM shall pay interest on the unpaid balance through the date of payment, at the rate of interest on investments for the Hazardous Substance Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). If any response costs are outstanding at the time the U.S. EPA with the concurrence of Illinois EPA issues the Certificate of Completion of the Work under this First Amended Consent Decree, JM shall, within 30 days of the submission of an itemized cost statement pay such response costs. The total amount to be paid by JM pursuant to Paragraph 51 shall be deposited in the Johns Manville Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

52. JM has paid \$15,571.00 to the State as reimbursement for certain response costs incurred by Illinois EPA in connection with the Facility prior to September 30, 1987. JM has also paid certain response costs incurred by the State at the Facility after September 30, 1987. JM shall pay all unreimbursed response costs incurred by the State in connection with the Facility between entry of the Original Consent Decree and the entry of the First Amended Consent Decree, which are not inconsistent with the NCP. Such response costs shall include all direct and indirect costs incurred by the State in overseeing, implementing, enforcing and amending the Original Consent Decree. JM shall also pay to the State all response costs incurred by the State after entry of the First Amended Consent Decree in connection with the Facility, which are not inconsistent with the NCP. Such response costs shall include all direct, indirect and allocated program costs incurred by the State in overseeing, implementing and enforcing the First Amended Consent Decree, including the environmental easement/restrictive covenants in

Section VIII.

53. Payments shall be made by JM on a periodic basis and within 30 days of submission of an itemized cost statement and supporting documentation by the Illinois EPA. Payments shall be made by JM to the "Illinois Environmental Protection Agency" designated to be deposited in the "Hazardous Waste Fund." JM shall include the name and number of this case, along with the Illinois Site identification number and FEIN Number 13-0889690. Payments shall be made by certified or cashier's check sent to: Fiscal Services Section, Accounts Receivable Unit, Illinois EPA, P.O. Box 19276, 1021 North Grand Avenue East, Springfield, Illinois 62794-9276.

54. JM may contest payment of any response costs if it determines that the United States or the State has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed). Any such objection shall specifically identify the contested response costs and the basis for objection and any request for supporting documentation. In the event of an objection, JM shall within the 30 day period pay all uncontested response costs to the United States or the State and shall initiate the Dispute Resolution procedures in Section XII. JM shall send to the United States and the State a copy of the check paying the uncontested response costs. If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, JM shall pay the sums due (with accrued interest) to the United States or the State, if the State costs are disputed, in the

manner described above. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding JM's obligation to reimburse the United States or the State for their response costs.

XV. STIPULATED PENALTIES

55. (a) JM shall be liable for stipulated penalties in the amounts set forth below if JM fails to fully perform any requirement of this First Amended Consent Decree, the Phase II Work Plans and O & M Manual in accordance with the schedules established therein and all applicable requirements of law.

<u>Deliverable/Activity</u>	<u>Days 1-7</u>	<u>Days Greater than 7</u>
Failure to submit a Draft Phase II Work Plan in accordance with Paragraph 15	\$2,000/day	\$4,000/day
Failure to submit a Final Phase II Work Plan in accordance with Paragraph 15	\$2,000/day	\$4,000/day
Failure to close the miscellaneous disposal pit and collection basin in accordance with Paragraph 15	\$2000/day	\$4,000/day
Failure to close the wastewater treatment ponds and system in accordance with Paragraph 15	\$2,000/day	\$4,000/day
Failure to cap or remove the asbestos containing sediment in the collection basin, industrial canal and pumping lagoon in accordance with Paragraph 15	\$2,000/day	\$4,000/day
Failure to perform requirements in the O & M Manual and Phase II Work Plans	\$2,000/day	\$4,000/day
Failure to reserve environmental easement/	\$2,000/day	\$4,000/day

restrictive covenants on conveyance of title
in accordance with Section VIII.

Failure to comply with the restrictions in Paragraph 23 and the environmental easement/restrictive covenants in Section VIII	\$2,000/day	\$4,000/day
Failure to submit progress reports or other miscellaneous reports	\$500/day	\$1,000/day
Failure to meet any other scheduled deadline in the First Amended Consent Decree, Phase II Work Plans or O & M Manual	\$500/day	\$1,000/day

If JM fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. JM shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made.

(b) All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies JM of any deficiency; (2) with respect to a decision by the Superfund Director, U.S. EPA Region 5, under Section XII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that JM's reply to U.S. EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission

regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

(c) All penalties accruing under this Section shall be due and payable to the United States within 30 days of JM's receipt from U.S. EPA of a demand for payment of the penalties, unless JMs invoke the dispute resolution procedures under Section XII. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to Environmental Protection Agency, Region 5, Attention: Program Accounting and Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Region and Site/Spill ID # 05A5, the DOJ Case Number 90-11-1-7B, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XVIII (Notices), and to the Project Coordinator.

(d) The payment of penalties shall not alter in any way JM's obligation to complete the performance of the Work required under this Consent Decree.

56. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to U.S. EPA within 15 days of the agreement or the receipt of U.S. EPA's decision or order;

(b) If the dispute is appealed to this Court and the United States prevails in

whole or in part, JM shall pay all accrued penalties determined by the Court to be owed to U.S. EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph (c) below;

(c) If the District Court's decision is appealed by any Party, JM shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA or to JM to the extent that they prevail.

57. Nothing in this First Amended Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of JM's violation of this First Amended Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. 9622(l) provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this First Amended Consent Decree.

XVI. COVENANTS NOT TO SUE

58. In consideration of actions which will be performed and payments which will be made by JM under the terms of the First Amended Consent Decree, and except as otherwise

specifically provided in this Decree, the United States and the State hereby covenant not to sue or take administrative action against JM or its officers, directors, employees, or agents acting in such capacity, pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 for performance of the Work/Remedial Action as defined in Paragraph (4)(z) and recovery of response costs as defined in Section XIV. These covenants not to sue shall take effect upon the receipt of the payments required by Section XIV. With respect to future liability within the Facility boundaries depicted in Exhibit 3, this covenant not to sue shall take effect upon certification by U.S. EPA with the concurrence of Illinois EPA of completion of the Work required under this First Amended Consent Decree and payment of all costs required under Section XIV. These covenants not to sue are conditioned upon satisfactory performance by JM of its obligations under this First Amended Consent Decree.

59. Notwithstanding any other provision of this First Amended Consent Decree, the United States and the State reserve and this Decree is without prejudice to claims based on :

- (a) Liability for any area located adjacent to and/or outside of the boundaries of the Facility as set forth in Exhibit 3, including but not limited to areas where asbestos and/or other Waste Material have or may have come to be located from the Facility;
- (b) Liability for Johns Manville's former manufacturing facility (the SRP Property), which is approximately depicted in Exhibit 5;
- (c) Liability arising from hazardous substances removed from the Facility;
- (d) Liability for damages for injury to, destruction of or loss of natural resources and for the costs of any natural resource damages assessment;
- (e) Criminal liability;
- (f) Claims based on a failure by JM to meet the requirements of this First Amended Consent Decree;

- (g) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- (h) Liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Facility; and
- (i) Liability, prior to Certification of Completion of the Work/Remedial Action, for additional response actions that U.S. EPA determines are necessary to achieve performance standards.

60. Notwithstanding any other provision in this First Amended Consent Decree, (1) the United States and the State reserve the right to institute proceedings in this action or in a new action or to issue an Administrative Order seeking to compel JM to perform any additional response actions relating to the Facility, or (2) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States or the State for its response costs for action undertaken under CERCLA, relating to the Facility, if:

(a) Prior to Certification of Completion of the Work/Remedial Action:

(1) conditions at the Facility, previously unknown to the U.S. EPA or Illinois EPA, are discovered after lodging of this First Amended Consent Decree, or (2) information is received, in whole or in part, after lodging of this First Amended Consent Decree, and U.S. EPA determines that these previously unknown conditions or this information together with any other relevant information indicate that the remedial action is not protective of human health and the environment.

(b) Subsequent to Certification of Completion of the Work/Remedial Action:

(1) conditions at the Facility, previously unknown to the U.S. EPA or Illinois EPA, are discovered, or (2) information previously unknown to U.S. EPA and the Illinois

EPA is received in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Work/Remedial Action is not protective of human health and the environment.

(c) For purposes of Paragraph 60(a), the information and the conditions known to U.S. EPA and Illinois EPA shall include only that information and those conditions known to U.S. EPA and Illinois EPA as of the date of lodging and set forth in the ROD as Modified and the administrative record. For purposes of Paragraph 60(b), the information and the conditions known to U.S. EPA and Illinois EPA shall include only that information and those conditions known to U.S. EPA and Illinois EPA as of the date of Certification of Completion of the Work/Remedial Action and set forth in the ROD as modified, the administrative record, the post-ROD administrative record, or in any information received by U.S. EPA and Illinois EPA pursuant to the requirements of this First Amended Consent Decree prior to Certification of Completion of the Work/Remedial Action.

61. Notwithstanding any other provision in this First Amended Consent Decree, the covenants not to sue in this Section shall not relieve JM of its obligation to maintain compliance with this First Amended Consent Decree. The United States and the State reserve their rights to take response actions at the Facility in the event of a breach of the terms of this First Amended Consent Decree and to seek recovery of costs resulting from such a breach, or relative to any portion of the work funded or performed by the United States or the State, or incurred by the United States or the State as a result of having to seek judicial assistance to remedy conditions at the Facility.

62. Nothing in this Decree shall constitute or be construed as a release or a covenant

not to sue regarding any claim or cause of action against any person corporation or other entity not a signatory to this Decree for any liability it may have arising out of or relating to the JM Waukegan Facility. The United States and the State expressly reserve the right in their unreviewable discretion to sue any person other than JM in connection with the Facility.

XVII. COVENANTS BY JM, OTHER CLAIMS, CONTRIBUTION PROTECTION

63. JM agrees to indemnify, save and hold harmless the United States, the State and/or their representatives from any and all claims or causes of action arising from acts or omissions of JM and/or its representatives in carrying out the activities pursuant to this First Amended Consent Decree, except for such claims or causes of action arising from acts or omissions of the United States, and the State, their employees, agents, and assigns. The United States and the State shall notify JM of any such claims or actions within 60 working days of receiving notice that such a claim or action is anticipated or has been filed. The United States and the State agree not to act with respect to any such claim or action without first providing JM an opportunity to participate.

64. The United States and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by JM in carrying out the activities pursuant to this First Amended Consent Decree. The proper completion of the Work under this First Amended Consent Decree is solely the responsibility of JM.

65. JM hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Facility or this First Amended Consent Decree, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance

Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

(b) any claims against the United States and/or the State under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613; or

(c) any claim arising out of response actions or in connection with the Facility, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

66. U.S. EPA agrees that upon entry of the Original Consent Decree, the June 14, 1984 Administrative Order by Consent described in the Preamble (B above), has been completed by JM to U.S. EPA's satisfaction and has been terminated. On September 1, 1987, U.S. EPA entered an Administrative Order against JM requiring JM to implement the ROD at the Facility. U.S. EPA agrees that upon entry of the Original Consent Decree, the September 1, 1987 Administrative Order was withdrawn and is of no further force or effect.

67. The parties agree that the Facility defined herein is a "Manville Owned Site" within the meaning of paragraphs 27 and 41 of the Stipulation and Order of Dismissal and Settlement entered by the Court on October 28, 1994 in Manville Corp. et al. v. United States of America, United States District Court for the Southern District of New York (91 Civ. 6683 [RWS]) ("Global Settlement Order"). Nothing contained herein is intended to or shall be interpreted as waiving any rights that the parties may have under the Global Settlement Order with respect to areas outside of the boundaries of the Facility.

68. In any subsequent administrative or judicial proceeding initiated by the United

States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Facility, JM shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case.

69. The Parties agree, and by entering this First Amended Consent Decree this Court finds, that JM is entitled, as its effective date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this First Amended Consent Decree. Matters addressed include the Work set forth in Section V and the response costs pursuant to Section XIV.

XVIII. NOTICES

70. Whenever, under the terms of this First Amended Consent Decree, notice is required to be given by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XII hereof, such correspondence shall be directed to the following individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing:

As to the United States:

Chief, Environmental Enforcement Section
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DJ# 90-11-1-7B

As to U.S. EPA:

Regional Counsel
 Attn: Johns Manville
 Staff Attorney
 U.S. Environmental
 Protection Agency
 Mail Code C14J
 77 W. Jackson Boulevard
 Chicago, Illinois 60604

Director, Superfund Division
 Attn: Johns Manville
 Remedial Project Manager
 Mail Code SR 6J
 U.S. Environmental Protection Agency
 77 W. Jackson Boulevard
 Chicago, Illinois 60604

As to JM:

Bruce D. Ray
 Associate General Counsel
 Johns Manville
 717 17th Street (80202)
 P.O. Box 5108
 Denver, CO 80217-5108
 (303) 978-3527
 (888) 629-6374 FAX

As to the State of Illinois

Illinois Environmental
 Protection Agency
 Attn: Manager, Federal
 Site Remediation Section
 Division of Remediation
 Management
 1021 Grand Avenue East
 Springfield, Illinois 62794-9276

Chief, Environmental Bureau North
 Illinois Attorney General's Office
 100 W. Randolph Street
 Chicago, Illinois 60601

XIX. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

71. The United States and the State agree that the Work, if properly performed as set forth in Section V hereof, is consistent with the provisions of the National Contingency Plan, pursuant to 42 U.S.C. § 9605.

XX. RESPONSE AUTHORITY

72. Notwithstanding any other provision of this First Amended Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXI. MODIFICATION

73. Except as provided for herein, there shall be no modification of this First Amended Consent Decree without written approval of all Parties.

XXII. EFFECTIVE DATE AND CERTIFICATION OF COMPLETION

74. This First Amended Consent Decree shall be effective upon the date of its entry by the Court.

75. Completion of Construction: When JM determines that it has completed construction of each of the remedial activities required under Paragraph 15 and the performance standards have been attained for each remedial activity, JM shall submit a written report to U.S. EPA for approval, with a copy to Illinois EPA. In the report, a registered professional engineer and the JM Project Coordinator shall state that the construction of the remedial activity has been completed in full satisfaction of the requirements of this First Amended Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of JM or JM's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If after review of the written report, U.S. EPA, with concurrence by the State, determines that the remedial activity or any portion thereof has not been completed in accordance with this First Amended Consent Decree or that the performance standards have not been achieved, U.S. EPA will notify JM in writing of the activities that must be undertaken by JM pursuant to this First

Amended Consent Decree to complete the remedial activity and achieve the performance standards. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the First Amended Consent Decree or require JM to submit a schedule to U.S. EPA for approval. JM shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke dispute resolution.

76. Completion of the Work/Remedial Action. When JM determines that it has completed the Work (including O & M), it shall submit to U.S. EPA a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this First Amended Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of JM or JM's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, U.S. EPA, with concurrence by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, U.S. EPA will notify JM in writing of the activities that must be undertaken by JM pursuant to this Consent Decree to complete the Work. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the First Amended Consent Decree or require JM to submit a schedule to U.S. EPA for approval. JM shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures. If U.S. EPA concludes, based on the initial or any

subsequent request for Certification of Completion by JM and concurrence by the State, that the Work has been performed in accordance with this First Amended Consent Decree, U.S. EPA will so notify the JM in writing.

XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

77. This First Amended Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to entry of the Decree if comments received disclose facts or considerations which indicate that the Decree is inappropriate, improper or inadequate. JM consents to entry of this First Amended Consent Decree without further notice.

XXIV. NOTICE TO THE FEDERAL NATURAL RESOURCES TRUSTEE

78. Pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), U.S. EPA has given notice to the Federal natural resource trustee of the negotiations with potentially responsible parties regarding the scope of remedial action at the Facility.

XXV. EXHIBITS

79. The following Exhibits are attached to and incorporated into this First Amended Consent Decree:

- Exhibit 1: First Explanation of Significant Differences
- Exhibit 2: Second Explanation of Significant Differences
- Exhibit 3: Facility Map
- Exhibit 4: Sites 1, 2, 3, 4, 5, 6 and 7
- Exhibit 5: Johns Manville Owned Property that is enrolled in the State of

Illinois Site Remedial Program ("SRP Property")

- Exhibit 6:** Areas of the Facility remediated under Phase I Work Plan and
Johns Manville Waukegan Disposal Area
- Exhibit 7:** Phase I Groundwater and Surface Water Monitoring Well
Locations
- Exhibit 7A:** Phase II Groundwater and Surface Water Monitoring Well
Locations
- Exhibit 8:** Phase I Air Monitoring
- Exhibit 9:** Areas of the Facility to be remediated under Phase II Work Plans
- Exhibit 10:** Area of Facility Subject to Land Use Restrictions in Paragraph
25(a)
- Exhibit 11:** Notice - Johns Manville Waukegan Disposal Area NPL Site
- Exhibit 12:** Notice - SRP Property
- Exhibit 13:** Model Deed: Johns Manville Waukegan Disposal Area NPL Site
- Exhibit 14:** Model Deed: SRP Property

XXVI. SERVICE

80. JM shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this First Amended Consent Decree. JM hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXVII. RETENTION OF JURISDICTION/ FINAL JUDGMENT

81. This Court retains jurisdiction over the subject matter of the First Amended Consent Decree and over JM for the duration of performance of the provisions of the Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction and relief as may be necessary for construction or modification of the Decree, to enforce compliance with its terms or to resolve disputes in accordance with Section XII (Dispute Resolution).

82. This First Amended Consent Decree and its exhibits constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the First Amended Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this First Amended Consent Decree.

83. Upon approval and entry by the Court, this First Amended Consent Decree shall constitute a final judgment between and among the United States, the State and JM. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

DEC 01 2004

SO ORDERED THIS ___ DAY OF ___, 20__.


United States District Judge

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

FOR THE UNITED STATES OF AMERICA

Date: 2.2.04

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 2.4.04

Miriam L. Chesslin by STW
MIRIAM L. CHESSLIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Post Office Box 7611
Washington, DC 20044
(202) 514-1491

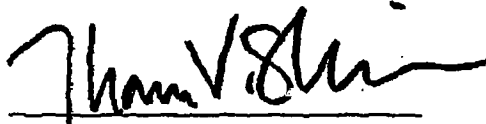
PATRICK FITZGERALD
United States Attorney for the
Northern District of Illinois

Date: _____

LINDA WAWZENSKI
Assistant U.S. Attorney
219 S. Dearborn Street
Chicago, IL 60604
(312) 353-1994

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

Date:

1.12.04

THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

Date:

1-5-04

JANET R. CARLSON
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6059

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

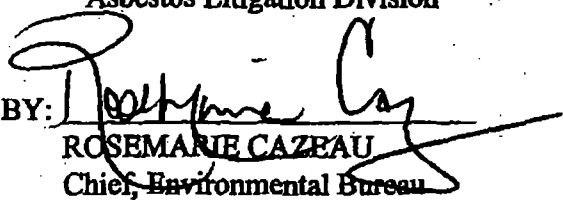
FOR THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division

Date: 12/2/03

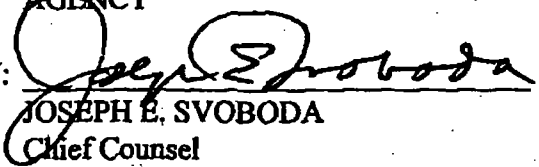
BY:


ROSEMARIE CAZEAU
Chief, Environmental Bureau
Assistant Attorney General
188 West Randolph St
20th Floor
Chicago, IL 60601
(312) 814-3094

Date: 11/25/03

BY:

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY


JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel
1021 Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

FOR JOHNS MANVILLE

12/17/03
Date



BRUCE D. RAY
Associate General Counsel
717 17th Street (80202)
P.O. Box 5108
Denver, Colorado 80217
(303) 978-3527

EXHIBIT 1
to First Amended Consent Decree
United States et al. v. Manville Sales Corp.
(N.D. Ill. Civ. Action No. 88C 630)

FIRST EXPLANATION OF SIGNIFICANT
DIFFERENCES

for the

JOHNS-MANVILLE SITE

WAUKEGAN, ILLINOIS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB - 9 1993]

REPLY TO THE ATTENTION OF:

DATE:

SUBJECT: Request for Concurrence on the Explanation of Significant Differences for the Remedial Action at the Johns-Manville Superfund Site, Waukegan, Illinois

FROM: William Muno, Acting Director
Waste Management Division

Bertram C. Frey acting for
Gail C. Ginsberg, Regional Counsel
Office of Regional Counsel

TO: Valdas V. Adamkus
Regional Administrator

By this memorandum we are recommending that you authorize the change in the remedial action at the Johns-Manville site by executing the attached Explanation of Significant Differences (ESD).

This ESD was prepared in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., the National Contingency Plan (40 CFR Part 300), and Agency Policy. We have reviewed the attached documents and have concluded that the ESD is both legally and technically sufficient. As such, we believe that the implementation of the remedial measure is a proper exercise of your delegated authority.

Please feel free to contact either one of us should you have any questions.

Concur

for

Valdas V. Adamkus
Valdas V. Adamkus
Regional Administrator

2/9/1993
Date

Not Concur

Valdas V. Adamkus
Regional Administrator

Date

EXPLANATION OF SIGNIFICANT DIFFERENCES
for the
JOHNS-MANVILLE SITE
WAUKEGAN, ILLINOIS

INTRODUCTION

The Johns-Manville Site, located in Waukegan, Illinois, (Johns-Manville Site or the Site) operated as an asbestos manufacturing facility from the 1920's through the early to mid-1980's. The disposal area covers approximately 130 acres of the approximately 300 acres of land owned by Schuller International, Inc. (Schuller), formerly the Johns-Manville Sales Corporation. For purposes of this document, however, Manville will be referred to instead of Schuller because Manville held title to and operated the facility during the majority of the time that the Site underwent investigation and remediation. Wastes containing primarily asbestos, and to a lesser extent, lead, chrome, thiram, and xylene have been deposited at the site since about 1922. In the mid-1980's, asbestos use was discontinued in the manufacturing processes. The Johns-Manville site was listed on the National Priorities List, 40 C.F.R. Part 300 (NPL), in December 1982. A Remedial Investigation/Feasibility Study (RI/FS) was completed in 1987 with a Subsequent Record of Decision (ROD) executed in June 1987. Negotiations between the United States Environmental Protection Agency (U.S. EPA) and Manville resulted in a settlement for design and construction of the remedy as specified in the ROD.

The construction of the remedy was completed on August 21, 1991. However, conditions discovered during construction necessitated several changes to the original remedy outlined in the ROD, including the following: discontinuation of construction of dikes on the north side of the industrial canal that were a part of the remedy specified in the ROD; alteration of the cover requirements for dikes and dike roadways that were specified in the ROD; alteration of the thickness and composition requirements for side slopes and dry waste piles that were specified in the ROD; remediation of additional areas on-site not mentioned in the ROD that were later found to contain asbestos; remediation of the sludge disposal pit and the miscellaneous disposal pit not provided for in the ROD that were later found to contain asbestos; and paving of a former boat storage area and non-functioning railway corridor, not mentioned in the ROD, that were later found to contain asbestos. Additionally, deed restrictions are needed to protect the integrity of the remedy.

Therefore, pursuant to the Comprehensive Environmental Response, Compensation, Liability Act (CERCLA) Section 117(c) and Section 300.435(c)(2)(i) of the NCP, the U.S. EPA is publishing this Explanation of Significant Differences (ESD). As required by Section 300.825(a)(2) of the NCP, this ESD will become part of the Manville Administrative Record which is available for review at the Waukegan Public Library located at 28 North County Street, Waukegan, Illinois and in the U.S. EPA Records Center located at 77 W. Jackson Blvd, Chicago, Illinois.

The information used in U.S. EPA's assessment is currently available at the above repository.

SUMMARY OF SITE HISTORY, CONTAMINATION, AND SELECTED REMEDY

Manville's asbestos disposal pit was designed to receive friable asbestos wastes from the manufacturing processes, and the miscellaneous disposal pit and the sludge disposal pit were designed to receive non-asbestos-containing materials from the manufacturing processes and that had been dredged from the on-site wastewater treatment system. The on-site wastewater treatment system, that was permitted by the State of Illinois in 1973, consists of a series of unlined ponds and waterways where fibrous materials in the facility's wastewater were settled over time. Deposited materials were periodically dredged and transported to and deposited in the miscellaneous and sludge disposal pits. In addition, asbestos-containing and miscellaneous waste materials were deposited in large piles at the north, south, and most of the western boundaries of the Site.

Airborne asbestos monitoring was conducted at the site in 1973 and 1982 by the Illinois Institute of Technology Research Institute and the U.S. EPA Field Investigation Team, respectively. The 1973 study did not provide conclusive evidence of asbestos air contamination, and the 1982 study indicated that concentrations of asbestos fibers in the 2.5 to 15 micrometer range were elevated on-site and downwind of the site and concentrations of asbestos fibers less than 2.5 micrometers were elevated on-site.

The Manville Remedial Investigation indicated the need to prevent releases of asbestos and PM₁₀ (formerly Total Suspended Particulates) into the air. There was also a need for further air, ground water, and surface water monitoring at the site and a mechanism for remediation of any contaminants that are detected in concentrations that would present an endangerment to public health and the environment.

Different alternatives to address the site contamination problems were evaluated in the Manville Feasibility Study and after detailed analysis of the alternatives, a Proposed Plan was issued. After taking into consideration all public comments, the Regional Administrator signed a Record of Decision (ROD) on June 30, 1987. The remedy specified therein consisted of the following components:

- waste materials/soil in the inactive waste disposal areas of the site will be graded and covered with 24 inches of compacted non-asbestos-containing soil. The cover will consist of six inches of sand overlain by 12 inches of clay. Six inches of topsoil will be placed over the clay, and a vegetative cover will be grown and maintained.
- the asbestos disposal pit will be closed in June 1989 and provided with 24 inches of cover as described above.
- the miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system will continue to operate; asbestos is no longer used in the manufacturing processes at the facility.
- any asbestos-containing material generated from reconstruction activities at the facility after June, 1989 will be disposed of off-site in an approved landfill.
- a soil cover monitoring program will be developed to ensure that no asbestos reaches the surface of the cover and becomes releasable to the air in the future.
- where feasible, one layer of nominal 12-inch thick riprap will be placed on the interior slopes of settling basins. Four-inch thick bedding material will be used to prevent erosion of soil beneath the riprap. All other exposed interior slopes will be provided with 24 inches of soil cover as described above.
- a contingency plan will be developed to ensure that no asbestos-containing sludge is dredged from the wastewater treatment system in the future.
- the north, west, and south slopes of the waste disposal area will be sloped with non-asbestos-containing soil to a ratio of two horizontal to one vertical and provided with 24 inches of soil cover with vegetation as previously described.
- a minimum of 24 inches of non-asbestos-containing soil will be placed on top of all dikes and dike roadways on-site. In addition, heavily used dike roadways will be provided with eight inches of compacted gravel, and lightly travelled dike roadways with four inches of compacted gravel.

- a ground water and surface water detection monitoring system will be established on-site to ensure that any contaminants that leach from the site are detected. The monitoring and reporting of results to U.S. EPA will continue for a minimum of 30 years. A contingency plan will be developed to ensure that appropriate remedial action will be taken if contaminant concentrations that would pose a threat to public health and the environment are detected.
- an air monitoring program will be established at the waste disposal area to determine the levels of asbestos, lead, TSP, and chromium in the air around the site. The monitoring and reporting of results to U.S. EPA will continue for a minimum of 15 years after the initiation of on-site construction activities for the remedial action. A contingency plan will be developed to ensure that appropriate remedial action will be taken if contaminant levels exceed the applicable air standards or health-based criteria.
- debris from the beach and southwest portion of the waste disposal area will be cleaned up.
- the eastern site boundary will be fenced to limit access.
- additional warning signs will be placed along the site perimeter.
- the small ditch connected to the south end of the east ditch will be closed.
- the active waste disposal areas (miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system) will be sampled to verify Manville's claims that no asbestos has been deposited in the miscellaneous disposal pit, no asbestos-containing sludge is near the surface of the sludge disposal pit, and no hazardous wastes are entering the wastewater treatment system.
- the open area in the northeast corner of the miscellaneous disposal pit will be closed.
- peripheral ditches will be constructed to collect site run-off and channel it to the industrial canal.
- dikes will be constructed at the depressed area along the north side of the industrial canal to prevent industrial canal water from migrating off-site.

Negotiations between the U.S. EPA and Manville to design and construct the Site remedy resulted in a Consent Decree Settlement which was reached in December 1987. The State of Illinois was also a signatory to the Consent Decree, which was entered with the United States District Court for the Northern District of Illinois on March 18, 1988.

DESCRIPTION OF THE SIGNIFICANT DIFFERENCES AND THE BASIS FOR THOSE DIFFERENCES

Conditions discovered during the construction of the selected remedy necessitated six changes to the remedy outlined in the ROD, and deed restrictions are needed to ensure the integrity of the remedy. A description of these changes and the basis for these changes follows.

1. Remediation of Additional Areas

There were additional areas of the Site, not specified in the ROD, that were later identified as being contaminated with asbestos and, subsequently, were remediated. The first area was that surrounding the Industrial Canal, the Pumping Lagoon, and Eastern Site boundary. After trees near these areas were cleared during initial construction, waste products and materials resembling the sludge from the wastewater treatment system became visible. Representative samples collected in these areas in February 1990, revealed asbestos-containing material (ACM) located at or near the ground surface. Additional on-site sampling revealed that ACM was located at the ground surface of three additional areas--the borrow pit roadway, the boat storage area, and the non-functioning railway corridor. Manville submitted three additional work plans (the Second Work Plan Supplement, Second Work Plan Supplement-Amendment A and Third Work Plan Supplement) to address these additional areas of contamination. These additional work plans each contained a schedule for completion of remedial activities and were reviewed and approved by U.S. EPA and the Illinois Environmental Protection Agency (IEPA). Final remedial construction was completed on August 21, 1991.

The basis for remediating these additional areas was the same as that for remediating the areas originally designated in the ROD--to manage the risk to human health, safety, and the environment from friable asbestos. ACM was located at the ground surface and was, therefore, releasable to the air. All remediation of the additional areas was done consistent with the ROD - dry waste areas were covered with 24 inches of clean soil cover, with vegetation; areas at the edge of settling ponds/waterways were provided with one layer of nominal 12 inch thick riprap; and roadways were remediated consistent with the U.S. EPA-approved amended treatment requirements outlined below.

2. Dikes on the North Side of the Industrial Canal

The ROD specified that dikes will be constructed at the depressed area along the north side of the industrial canal. These dikes were not constructed. The basis for this difference is that the Illinois Department of Conservation (IDOC) expressed opposition to the construction of these dikes after the ROD was signed. The IDOC, which is responsible for administering the Illinois Beach State Park which borders the Manville facility on the north, stated that construction of the dikes would alter the existing water balance and could flood this area of the Illinois Beach State Park. This flooding could harm some endangered plant species located in the area. Since the initial reason for constructing the dikes was to prevent potential harm to the Illinois Beach State Park, U.S. EPA dropped this work provision from the selected remedy.

3. Roadway Thickness

The ROD required placement of a minimum of 24 inches of non-asbestos-containing soil on top of all dikes and dike roadways on-site and an additional eight inches of compacted gravel on heavily used dike roadways (Class I) and four inches of compacted gravel on lightly traveled dike roadways (Class II). What was actually constructed was a minimum 12-inch thick non-asbestos-containing sand layer overlain by a 12-inch thick compacted gravel layer on heavily traveled dike roadways (12/12 system), and a minimum 14-inch thick sand layer overlain by a 10-inch thick compacted gravel layer on lightly traveled dike roadways (14/10 system). The basis for this difference is that the newly devised cover systems require less material than those specified in the ROD, but provide full cover thickness and protection from freeze/thaw up migration equivalent to that provided by the 24-inch soil cover specified in the ROD.

4. Sludge Disposal Pit and Miscellaneous Disposal Pit

Remediation of the Miscellaneous Disposal Pit (MDP) and the Sludge Disposal Pit (SDP), although not specified in the ROD, was later required as part of the remedy. The ROD states that the MDP and SDP will be sampled to verify Manville's claims that no asbestos has been deposited in the MDP and no asbestos-containing sludge is near the surface of the SDP. The ROD is silent on what to do if asbestos is found in these pits. Sampling results did indicate the presence of asbestos at and near the surface of the MDP and SDP. Therefore, U.S. EPA required Manville to cover these pits with 24 inches of soil cover, consistent with the

the requirement for all dry waste areas. Manville decided to close the SDP, so the SDP was provided with a vegetative cover. Since the MDP is still active, it was not provided with a vegetative cover, but the asbestos-containing layer has since been covered over with non-asbestos-containing plant wastes. The basis for this difference from the ROD is simply that the ROD did not specify what to do if ACM was found at the surface of the MDP and SDP; therefore, action consistent with the rest of the ROD was taken once asbestos was discovered.

5. Cover Composition for Side Slopes and Dry Waste Piles

The composition and thickness of the cover requirements for side slopes and dry waste piles were changed from the criteria stated in the ROD. The ROD required that dry waste areas with slopes greater than 20% receive a 24-inch cover that consisted of a bottom six-inch sand layer overlain by 12 inches of clay and six inches of topsoil. New cover requirements were selected because the original cover as specified in the ROD may not have been stable at slopes greater than 20%, and could have lead to sloughing. The 26-inch clay/topsoil cover was analyzed and found to be equivalent to the 24-inch sand/clay/topsoil cover in terms of protection from freeze/thaw up migration.

Additionally, the ROD stated that dry waste areas were to be provided with a 24-inch soil cover, consisting of six inches of sand overlain by 12 inches of clay and six inches of topsoil. What was constructed was a 24-inch cover consisting of six inches of sand overlain by 15 inches of clay and three inches of topsoil. U.S. EPA allowed this change because the new cover requirements were found to be as protective as the original requirements, and the new requirement for three inches of topsoil would be adequate in promoting vegetative growth.

6. Paving

Remediation by paving, although not specified in the ROD, was later required as part of the remedy. During construction, asbestos was found at and near the ground surface of a former boat storage lot that was located on the southwestern edge of the Site, and near the non-functioning railway corridor. These areas were covered with a minimum six inch compacted gravel layer overlain by a minimum two-inch thick bituminous pavement cover. This cover was considered to provide equivalent protection to the 24-inch soil cover with vegetation and allowed future use of the area by potential tenants. Due to the decreased thickness (eight inches) of this cover, rigorous operation

and maintenance requirements were adopted to ensure the integrity of the bituminous pavement.

7. Deed Restrictions

No provisions for deed restrictions were included in the ROD. Deed restrictions are necessary to prevent interference with the operation and long-term maintenance of the remedy for the Site. Deed restrictions will ensure the integrity of the constructed remedy and are, hereby, required under this ESD.

SUPPORT AGENCY COMMENTS

The State of Illinois concurs with this ESD.

AFFIRMATION OF THE STATUTORY DETERMINATIONS

Based upon information discovered during remedial construction and the need for deed restrictions, changes have been made to the remedy selected in the ROD. The U.S. EPA and IEPA believe that the remedy not only remains protective of human health and the environment, but is and has been enhanced by remediating additional areas of the site and preserving the integrity of the remedy. The changes comply with federal and state requirements that were identified in the ROD as applicable or relevant and appropriate to this remedial action. The revised remedy utilizes permanent solutions and alternate treatment technologies to the maximum extent practicable for the Manville Site and is cost effective.

FIGURE

ADDITIONAL AREAS REMEDIATED

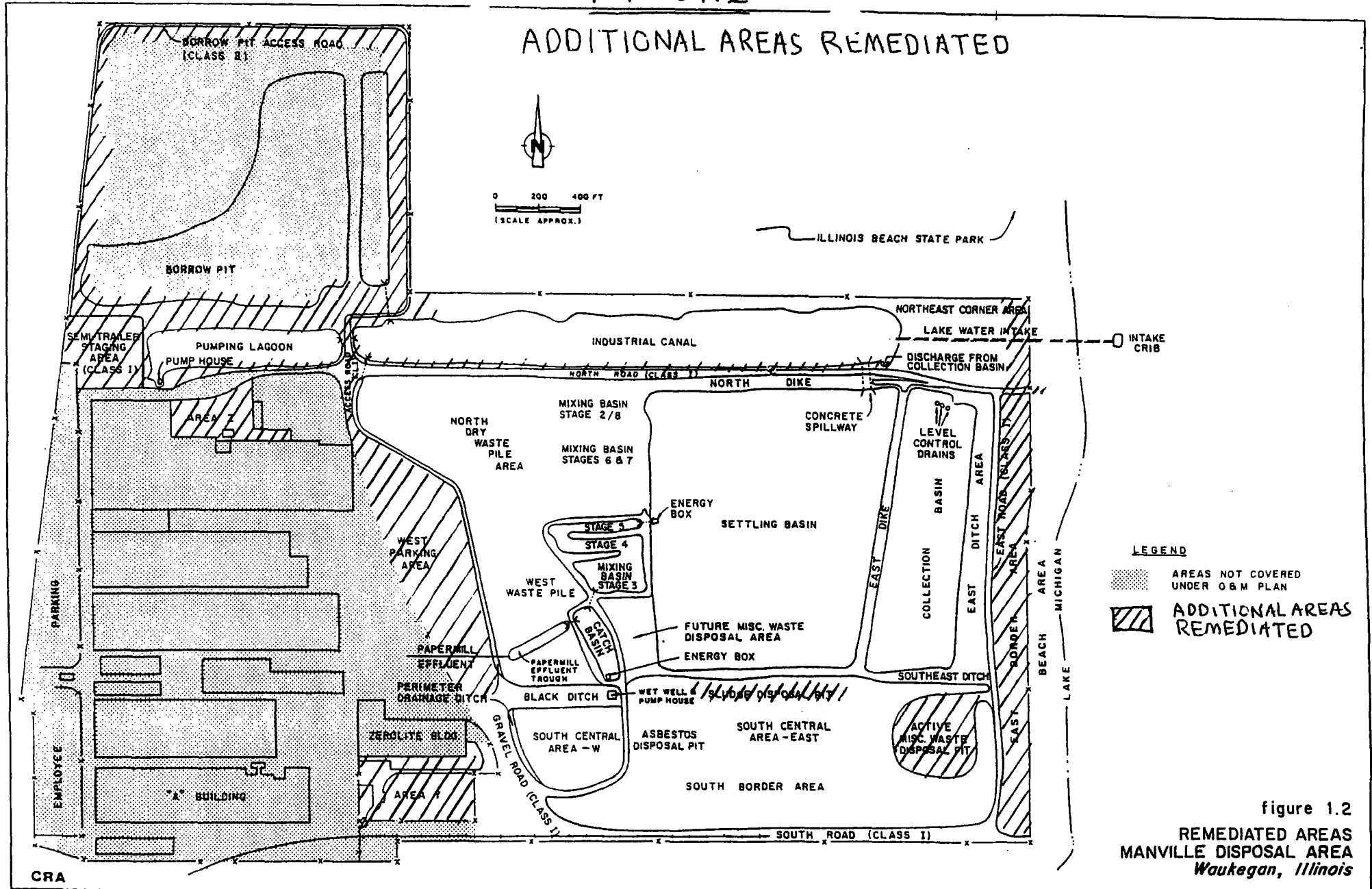


figure 1.2
 REMEDIATED AREAS
 MANVILLE DISPOSAL AREA
 Waukegan, Illinois

CRA

JOHNS - MANVILLE
UPDATE - ADMINISTRATIVE RECORD

PAGES	DATE	TITLE	AUTHOR	RECIPIENT
100+	3/18/88	Remedial Action Consent Decree	EPA/Manville	N/A
27	4/21/88	Remedial Work Plan Comment Letter	Brad Bradley U.S. EPA	Marvin Clumpus Manville
3	10/18/88	Revised Amended Remedial Work Plan Comment Letter	Kurt Niebergall IEPA	Bradley
4	4/17/89	Correspondence	John Zackrison Kirkland & Ellis	Larry Johnson U.S. EPA
18	4/27/89	Work Plan Supplement	Conestoga Rovers & Associates (CRA)	N/A
2	4/27/89	Correspondence	Richard Shepherd CRA	Bradley/Johnson
2	5/19/89	Work Plan Supplement Comment Letter	Neibergall	Bradley
21	3/26/90	Split Sample Results for 2/7/90 Sampling Event	CC Johnson and Malhotra	N/A
36	4/11/90	Cover Letter and Attachment Results for 2/7/90 Sampling Event	Bradley	Shepherd
4	7/2/90	Second Work Plan Supplement Comment Letter	Bradley	Shepherd
23+ Drawings	7/31/90	Second Work Plan Supplement (SWPS)	CRA	N/A
1	7/31/90	Transmittal Letter	Shepherd	Bradley
2	8/2/90	Letter - SWPS Changes	Shepherd	Bradley

PAGES	DATE	TITLE	AUTHOR	RECIPIENT
1	8/3/90	SWPS Approval Letter	Bradley	Shepherd
2	10/24/90	Letter - SWPS Modifications	Shepherd	Bradley
1	11/7/90	SWPS - Amendment A Comment Letter	Bradley	Shepherd
2 + Drawings	11/13/90	SWPS - Amendment A and Transmittal Letter	Shepherd	Bradley
1	11/27/90	SWPS - Amendment A Approval Letter	Bradley	Shepherd
2	12/28/90	Letter - SWPS - A Amendment Modifications	Shepherd	Bradley
1	6/6/91	Transmittal Letter	Shepherd	Bradley
2	6/20/91	Third Work Plan Supplement Comment Letter	Bradley	Shepherd
21	6/27/91	Third Work Plan Supplement (TWPS)	CRA	N/A
1	6/27/91	Transmittal Letter	Shepherd	Bradley
1	7/2/91	TWPS Approval Letter	Bradley	Shepherd
4	1/3/89	Letter - Proposed Consent Decree Modifications	Zackrison	Johnson
1	7/22/91	Transmittal Letter	Shepherd	Bradley
100+	10/91	Operation and Maintenance (O&M) Manual	CRA	N/A
1	10/11/91	Transmittal Letter	Shepherd	Bradley
4	10/18/91	O & M Manual Comment Letter	Neibergall	Bradley

PAGES	DATE	TITLE	AUTHOR	RECIPIENT
3	11/15/91	Letter - O&M Manual Revisions	Shepherd	Bradley
2	12/2/91	As-Built Plans Comments Letter	Neibergall	Bradley
1	12/11/91	O & M Manual Approval Letter	Bradley	Shepherd
13	12/30/91	Johns-Manville Closeout Report	U.S. EPA	N/A
1	2/11/92	Letter re: Delisting	Bruce Ray, Manville	Cynthia Kawakami, U.S. EPA
1	2/12/92	Letter re: Corporate Name change	Dale Wheeler, Schuller	Bradley
9	2/18/92	Final Construction Report Comment Letter	Bradley	Shepherd
2	4/13/92	Transmittal letter	Shepherd	Bradley
2	7/7/92	Second Draft Final Construction Report Comment Letter	Bradley	Shepherd
2	9/28/92	Transmittal Letter	Shepherd	Bradley

EXHIBIT 2
to First Amended Consent Decree
United States et al. v. Manville Sales Corp.
(N.D. Ill. Civ. Action No. 88C 630)

SECOND EXPLANATION OF SIGNIFICANT

DIFFERENCES

for the

JOHNS-MANVILLE SITE

WAUKEGAN, ILLINOIS

INTRODUCTION

From the 1920's through the mid-1980's, Johns Manville International, Inc. (Johns Manville), operated a 300 acre property in Waukegan, Illinois, as an asbestos manufacturing and landfill facility. Johns Manville owned and still owns this facility property. The formal disposal area at the facility property covers approximately 150 acres. The Johns-Manville Superfund Site consists of the majority of the facility property, plus three associated contaminated areas.

Johns Manville deposited wastes containing primarily asbestos and, to a lesser extent, lead, chrome, thiram and xylene, at the Site since about 1928. In the mid-1980's, Johns Manville stopped using asbestos in its manufacturing processes at the facility. Johns Manville discontinued all manufacturing activities at the facility in 1998. The United States Environmental Protection Agency (U.S. EPA) listed the Site on the National Priorities List, 40 C.F.R. Part 300 (NPL), in December 1982. Johns Manville completed a Remedial Investigation/Feasibility Study (RI/FS) in 1987 and U.S. EPA executed a Record of Decision (ROD) in June 1987. Negotiations between U.S. EPA and Johns Manville resulted in a settlement for design and construction of the remedy as specified in the ROD.

Johns Manville completed the construction of the remedy on August 21, 1991. However, conditions discovered during construction necessitated some changes and U.S. EPA allowed some other changes to the original remedy outlined in the ROD. A February 9, 1993, Explanation of Significant Differences (ESD) outlined these changes. Recently, the shutdown of Johns Manville's manufacturing facility in 1998 necessitated or allowed further changes in the remedy, which are the subject of this second ESD.

Therefore, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 117(c), 42 U.S.C. § 9617(c), and Section 300.435(c)(2)(1) of the National Contingency Plan (NCP), 40 C.F.R. § 300.435(c)(2)(1), U.S. EPA is publishing this second Explanation of Significant Differences. As required by Section 300.825(a)(2) of the NCP, 40 C.F.R. § 300.825(a)(2), this ESD will become part of the Johns-Manville Administrative Record which is available for review at the Waukegan Public Library located at 28 North County Street, Waukegan, Illinois and the U.S. EPA Records Center located at 77 West Jackson Boulevard, Chicago, Illinois. The information used in U.S. EPA's assessment is currently available at the cited repository.

SUMMARY OF SITE HISTORY, CONTAMINATION, AND SELECTED REMEDY

Within the on-site disposal area (see Figure 1), Johns Manville's asbestos disposal pit was designed to receive friable asbestos wastes from the manufacturing processes, while the miscellaneous disposal pit and the sludge disposal pit were designed to receive non-asbestos-

containing materials from the manufacturing processes that had been dredged from the on-Site wastewater treatment system. The on-Site wastewater treatment system, permitted by the State of Illinois in 1973, consists of a series of unlined ponds and waterways where fibrous materials in the facility's wastewater settled over time. Johns Manville periodically dredged these deposited materials, then transported them to and deposited them in the miscellaneous and sludge disposal pits. In addition, Johns Manville deposited asbestos-containing and miscellaneous waste materials in large piles at the northern, southern, and most of the western boundaries of the Site.

The 1987 Johns-Manville Remedial Investigation indicated the need to prevent releases of asbestos and particulate matter into the air. It also indicated a need for further air, ground water, and surface water monitoring at the site and a mechanism for remediation of any contaminants detected in concentrations that would present an endangerment to public health and the environment.

Johns Manville evaluated different alternatives to address the site contamination problems in the Feasibility Study and after detailed analysis of the alternatives, U.S. EPA issued a Proposed Plan detailing U.S. EPA's proposed remedy. After taking into consideration all public comments, the Regional Administrator signed a ROD on June 30, 1987. The remedy specified in the ROD included provisions for a soil cap for the waste disposal/landfill areas and included the following provision that is relevant to this ESD:

"The miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system will continue to operate . . ."

The United States, the State of Illinois, and Johns Manville entered into a consent decree for the design and implementation of the selected remedy. The U.S. District Court for the Northern District of Illinois entered the consent decree in March 1988. Johns Manville started physical construction of the remedy in November 1988 and completed construction in August 1991. With the exception of the miscellaneous disposal pit, all dry waste piles were provided with a soil cover, with vegetation, as specified in the ROD. As previously mentioned, U.S. EPA documented changes to the ROD that it approved during remedy implementation, in the February 9, 1993, ESD.

Johns Manville shut down the facility in the summer of 1998; however, it has not closed the remaining areas of the wastewater treatment system. Johns Manville continues to pump storm water runoff into the wastewater treatment system to maintain a wet condition and prevent any airborne asbestos releases from the sides or bottoms of the ponds.

DESCRIPTION OF THE SIGNIFICANT DIFFERENCES

In this document, U.S. EPA is making the following additions to the ROD:

Closure of Remaining Wastewater Treatment Ponds and On-Site Landfill Areas.

The remaining wastewater treatment ponds at the Johns Manville Site currently include, without limitation, the paper mill ditch, catch basin, mixing basin stages 3, 4, and 5, settling basin, collection basin, industrial canal, and pumping lagoon (See Figure 1). All of the on-site landfill areas and the remaining wastewater treatment ponds, with the exception of the collection basin, industrial canal and pumping lagoon, must be closed. Due to the possibility that dredged materials from the Waukegan Harbor dredging project may be placed in the settling basin, the settling basin may only remain open until:

- January 1, 2004;
- such time as the dredging project is completed; or
- the settling basin is rejected as a disposal option, whichever occurs first.

Closure of the ponds, including the settling basin if the dredged materials from Waukegan Harbor are not placed there, must include (a) the cessation of pumping storm water runoff into the former wastewater treatment system; and (b) the placement and maintenance of a vegetated soil cover over the portions of the system leading to the settling basin, in accordance with the cover requirements in the 1987 ROD. If the dredged materials from Waukegan Harbor are placed in the settling basin, the closure requirements for the settling basin will be in accordance with the applicable permit requirements.

The sediments in the collection basin, industrial canal, and the pumping lagoon must be sampled for asbestos. Based on the results of this sampling, U.S. EPA will require further action, as appropriate. Such action may include, without limitation:

- no action (if no asbestos over 1% is found);
- pickup of visible debris in these waterways;
- development of a contingency plan to assess and implement remedial actions for a situation where the water level in any of these ponds drops to a point where any asbestos-containing materials become exposed to the air;
- dredging of all or a portion of these waterways; or
- a combination of these actions.

Additionally, action must be taken to ensure that the soil cover on the side slopes of the industrial canal, the pumping lagoon, and the borrow pit remains protected from erosion (e.g. the outlet pipe from the industrial canal to Lake Michigan could be kept open and free of debris to

stabilize the water level in these ponds). Some of the actions listed in this paragraph could be addressed through an addendum to the existing Operation and Maintenance Plan for the Site.

The on-site landfill areas (i.e. the miscellaneous disposal pit and the portion of the collection basin where waste materials were deposited- see Figure 1) must be closed in accordance with 35 Ill. Adm. Code Part 811.

THE BASIS FOR THIS ESD

The basis for these changes in the ROD are that pond closure is more cost-effective and has greater long-term effectiveness than continually pumping storm water runoff into the former wastewater treatment system. Additionally, keeping water in the settling basin, which has a water level approximately 15 feet higher than the water table, would continue to exert a pressure head on asbestos containing material in and around the settling basin, which would increase the potential for asbestos migration in the ground water. Since the facility is closed and no more waste materials are being generated, closure of the on-site landfill areas is required by law.

SUPPORT AGENCY COMMENTS

The State of Illinois does not concur with this Second ESD. The reason that the State is not concurring is that it feels that the current State landfill regulations, which have a three foot or six foot soil cover requirement, should apply to the closure of the wastewater treatment system ponds. This would be in lieu of the 24-inch-plus-vegetation requirements for soil cover in the 1987 ROD. In accordance with "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Documents", OSWER Directive 9200.1-23P, July 30, 1999, U.S. EPA generally reopens the ARARs for a site only if (a) U.S. EPA issues a ROD Amendment for a site; or (b) for the issuance of an ESD, U.S. EPA adds a new remedy component. Neither is the case here. The changes outlined in this ESD do not rise to the level that would require a ROD Amendment since these changes are not fundamental changes to the remedy, and add no new remedy components to the ROD. The remedy remains, in all cases, soil cover with vegetation, as specified in the 1987 ROD.

The State felt that U.S. EPA should pursue a ROD Amendment, to allow for the application of the new landfill regulations. The desire to apply more stringent regulations is not, in and of itself, a legitimate reason for pursuing a ROD Amendment. Further, the 1987 ROD's cover requirements are in full compliance with ARARs and are more stringent than analogous requirements for inactive asbestos waste disposal sites in the Clean Air Act's National Emission Standard for Asbestos, 40 C.F.R. Subpart M. For these reasons, U.S. EPA will proceed to execute this ESD. U.S. EPA feels that, for the Johns-Manville Site, the 24-inch soil cover, with vegetation, is, and remains, protective of human health and the environment.

AFFIRMATION OF THE STATUTORY DETERMINATIONS

Based upon changing Site conditions and upon the information provided by Johns Manville regarding its proposed demolition of facility buildings, U.S. EPA has changed the remedy selected in the ROD. U.S. EPA believes that the remedy remains protective of human health and the environment. The changes comply with federal and state requirements identified in the ROD as applicable or relevant and appropriate to this remedial action. The revised remedy uses permanent solutions and alternate treatment technologies to the maximum extent practicable for the Johns-Manville Site and is cost effective.

Concur

Richard C Karl for

9-22-00

William E. Muno

Date

Superfund Division Director

Not Concur

William E. Muno

Date

Superfund Division Director

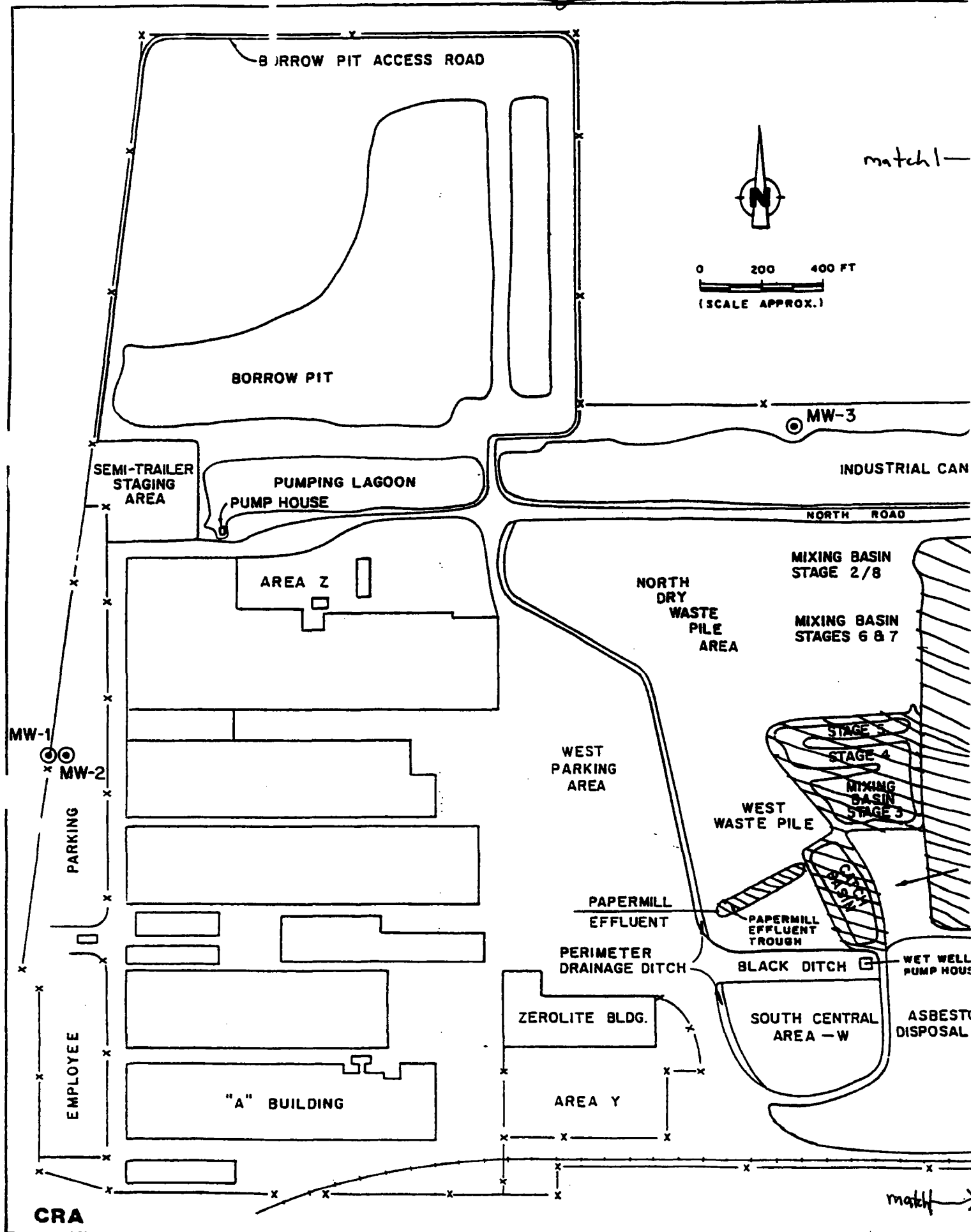
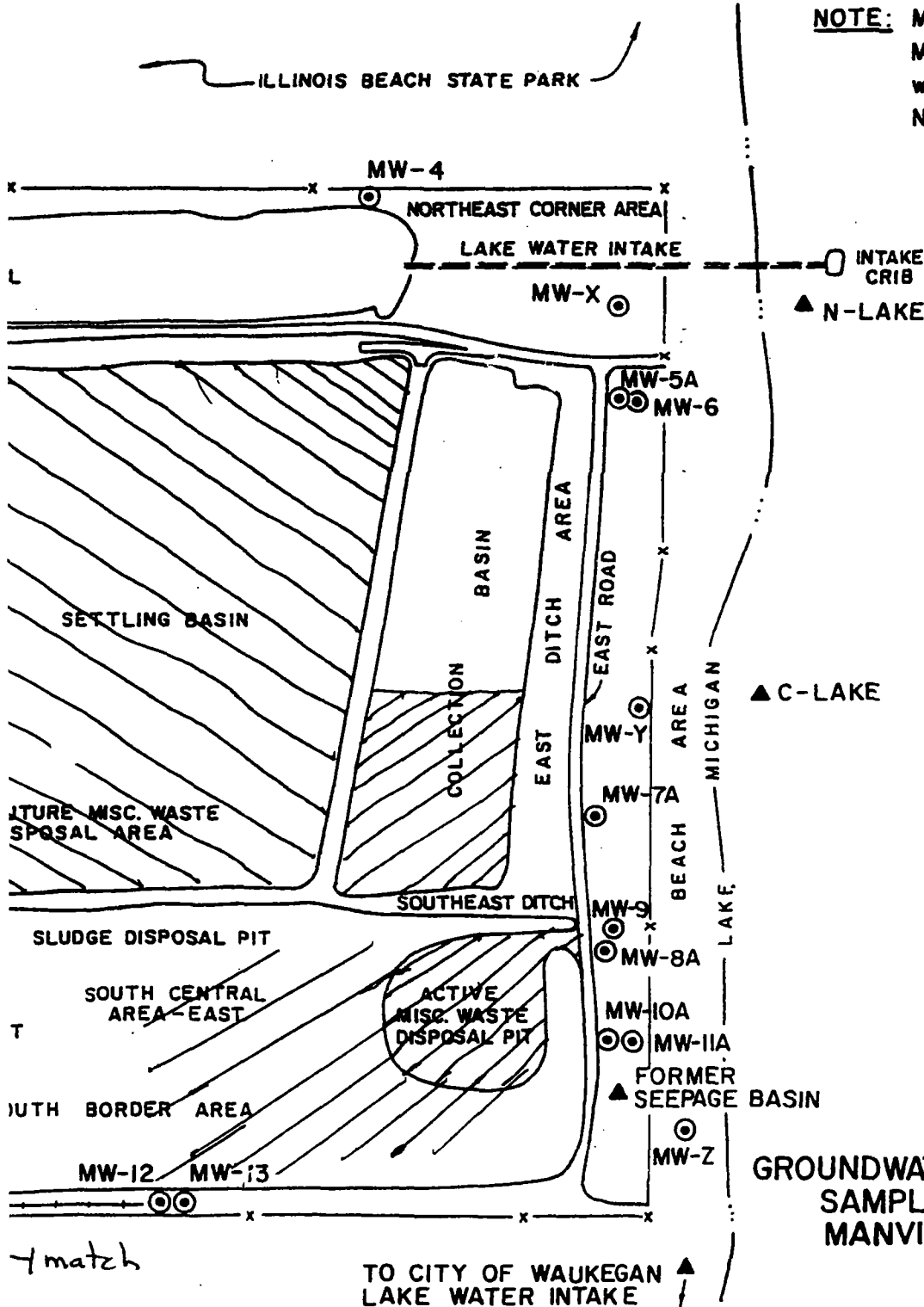


figure 1

KEY

- ⊙ Monitoring Well Location
- MW-10 Monitoring Well Number
- ▲ Surface Water Sampling Location
- N-LAKE Surface Water Sampling Identification

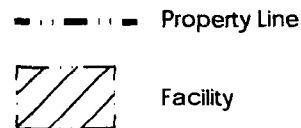
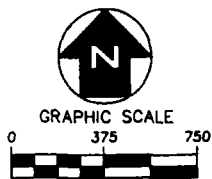
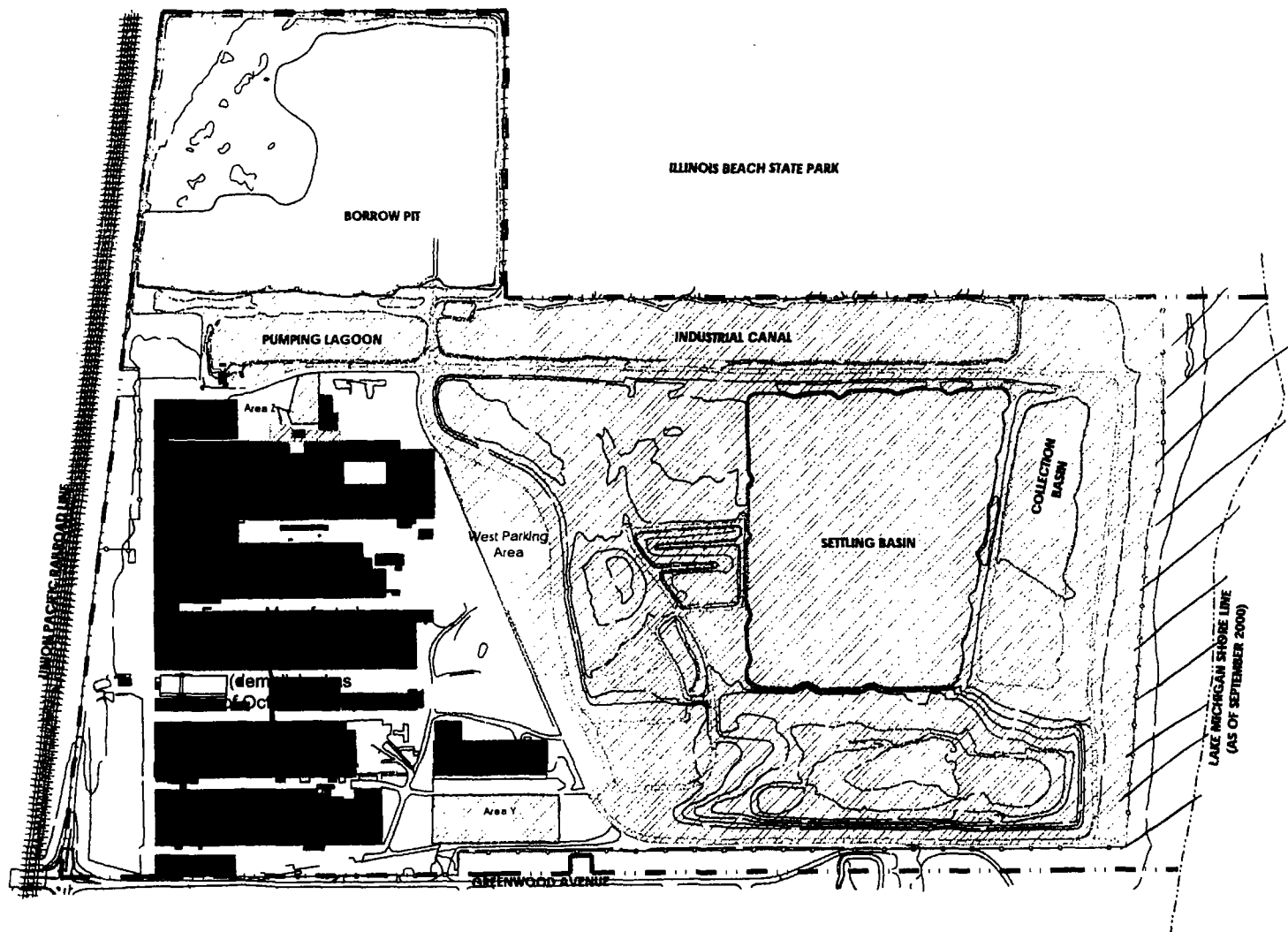
NOTE: Monitoring Wells MW-X, MW-Y and MW-Z used for water level data only. No samples collected.



Key:

- ▨ On-Site Landfill Areas (approximate boundaries)
- ▨ Wastewater Treatment Pond (remaining)

GROUNDWATER / SURFACE WATER
SAMPLING LOCATION PLAN
MANVILLE DISPOSAL AREA
Waukegan, Illinois

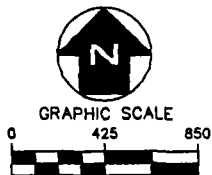
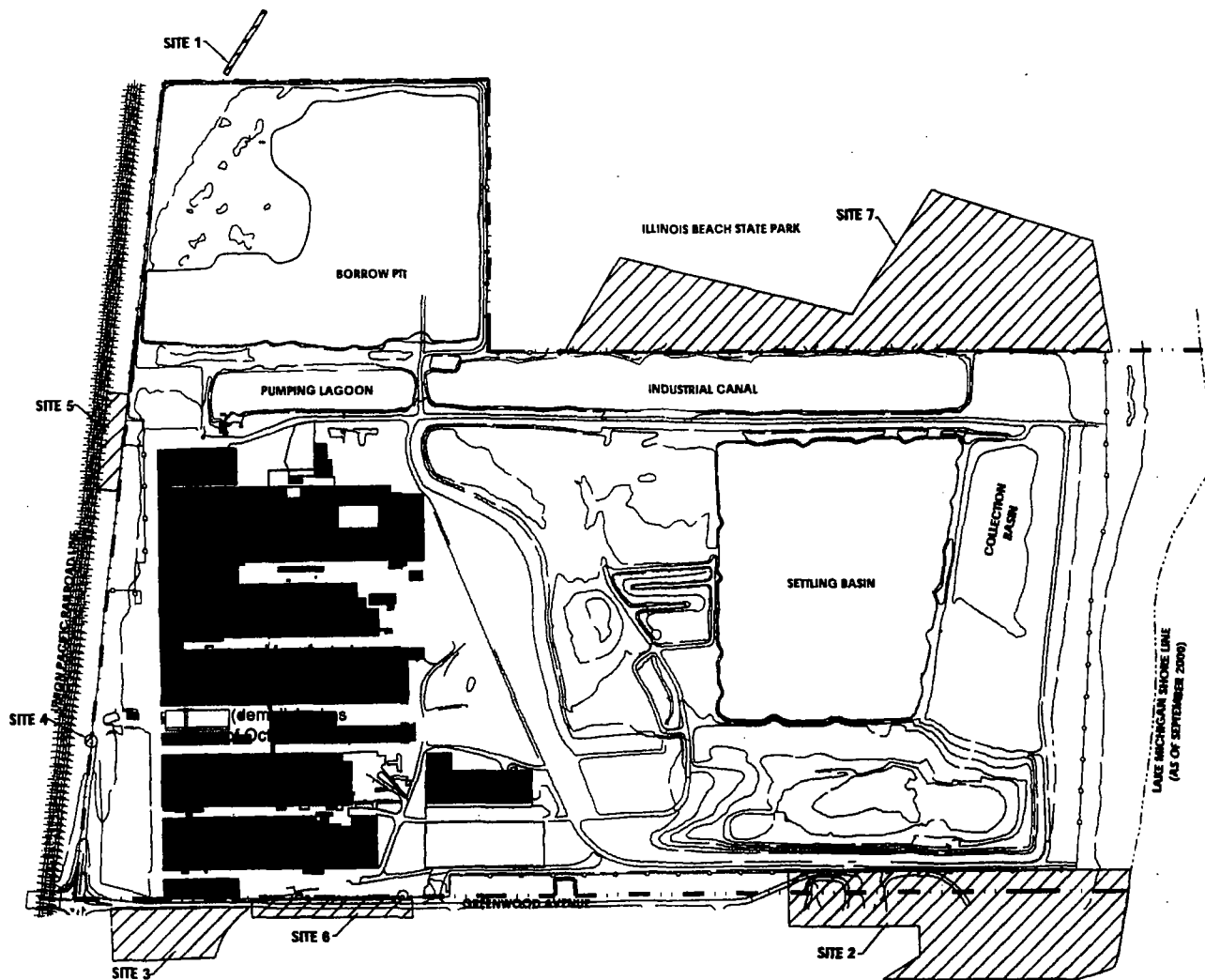


August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

FACILITY MAP

Exhibit 3 to First Amended Consent Decree in
United States et al. v. Manville Sales Corporation
(N.D. Ill. Civ. Action No. 88C 630)



--- Property Line
 [Hatched Box] Approximate areas of
 asbestos contamination
 discovered between 1998
 and 2003

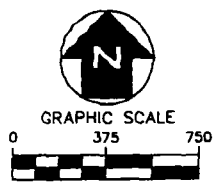
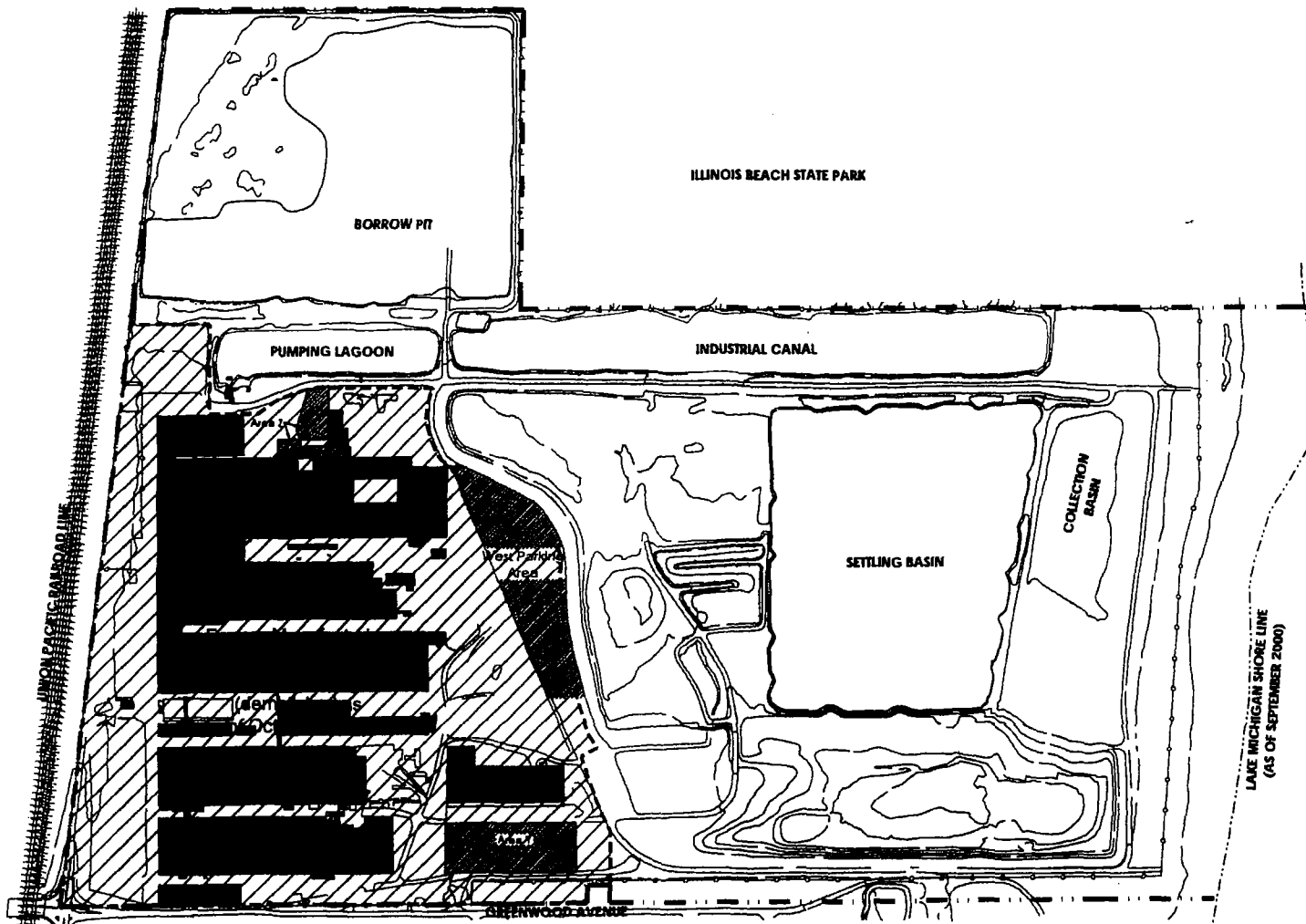
August 2003, Revision 0


**JOHNS MANVILLE
 Waukegan, Illinois**

SITES 1, 2, 3, 4, 5, 6 and 7

Exhibit 4 to First Amended Consent Decree in
 United States et al. v. Manville Sales Corporation
 (N.D. Ill. Civ. Action No. 88C 630)

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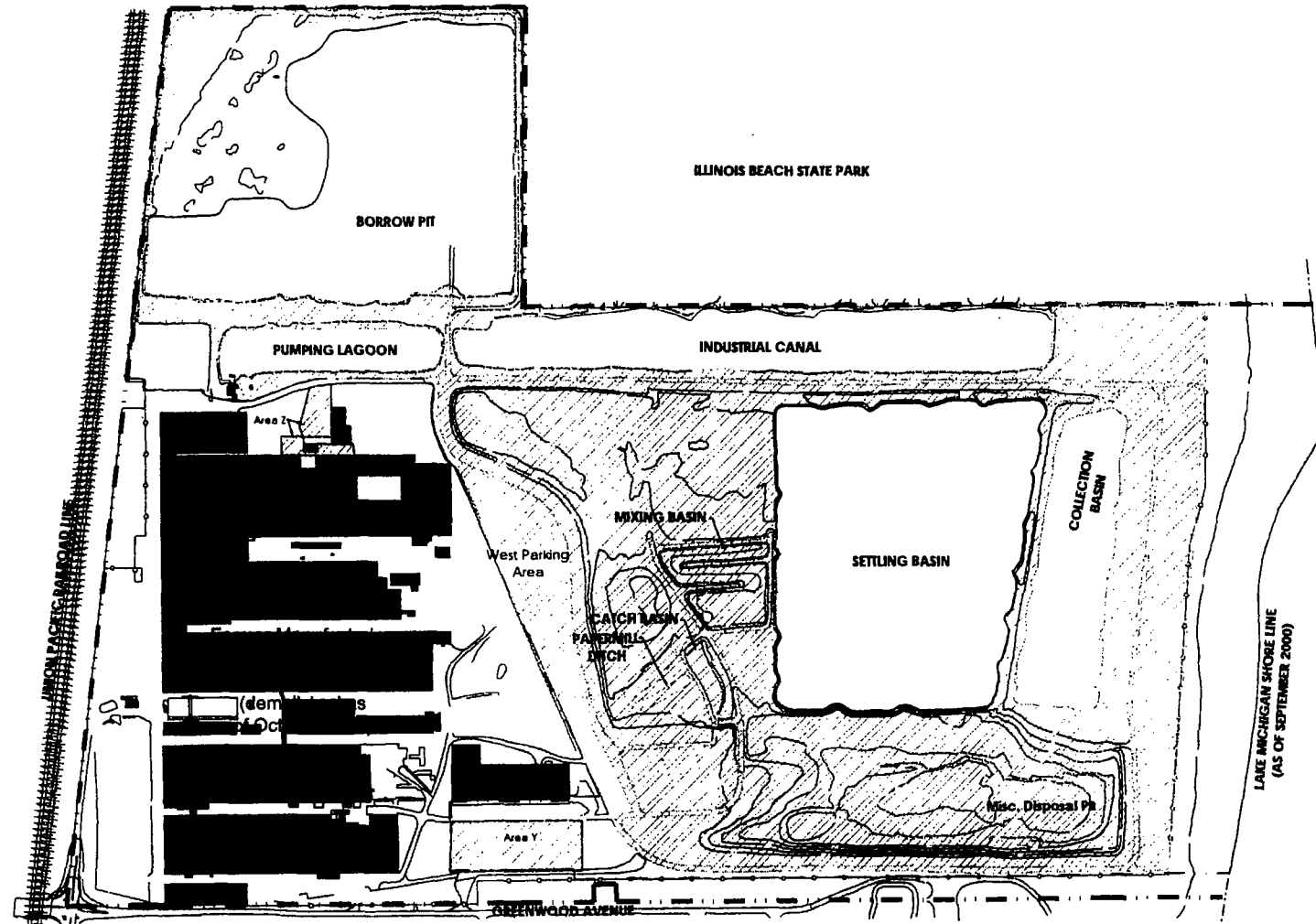
- Property Line
-  Property Enrolled in the Illinois Site Remediation Program (SRP)

August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

PROPERTY ENROLLED IN SRP

Exhibit 5 to First Amended Consent Decree in
United States et al. v. Manville Sales Corporation
(N.D. Ill. Civ. Action No. 88C 630)

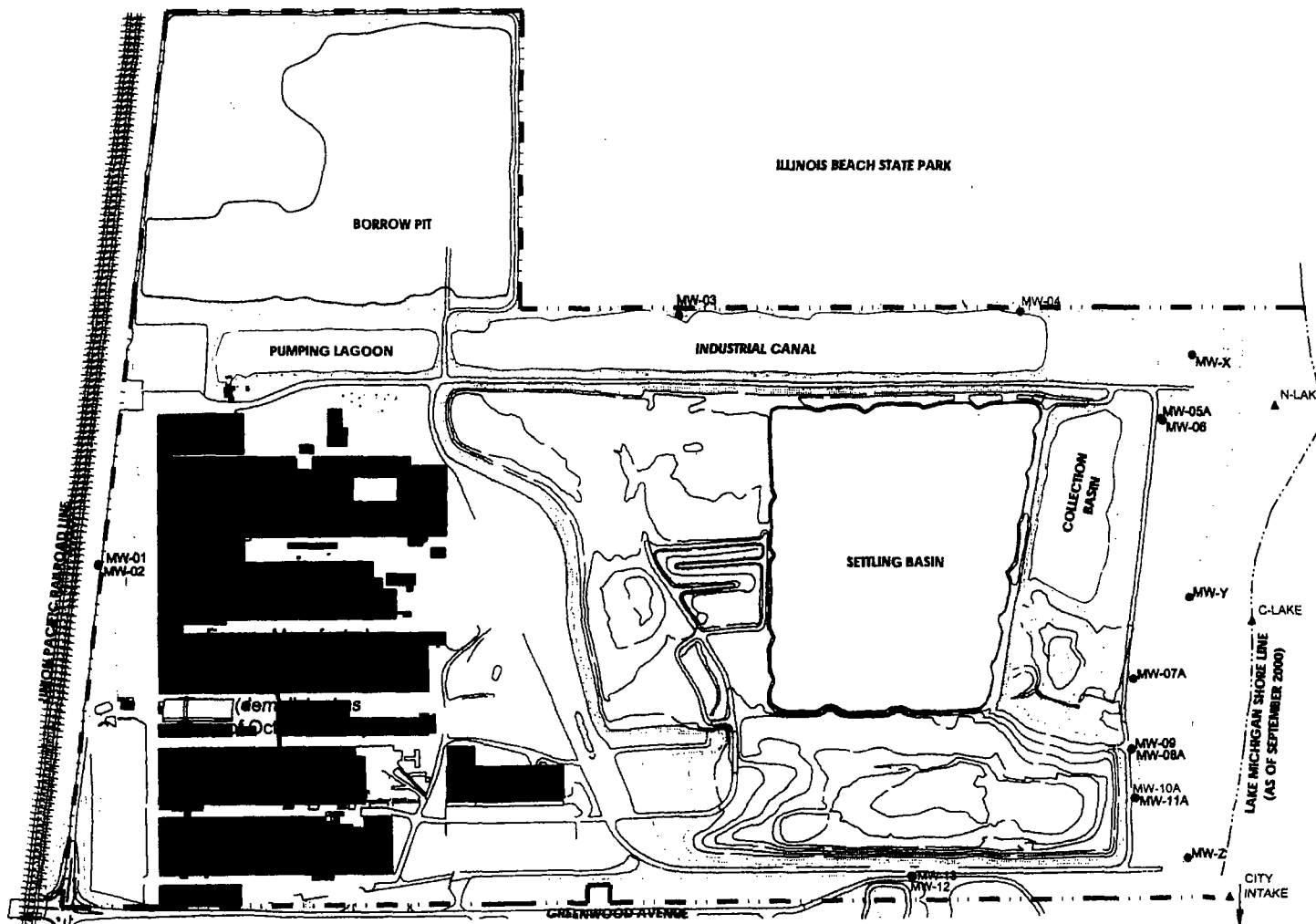


**JOHNS MANVILLE
Waukegan, Illinois**

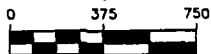
PHASE I WORK PLAN AREAS

Exhibit 6 to First Amended Consent Decree in
United States et al. v. Manville Sales Corporation
(N.D. Ill. Civ. Action No. 88C 630)

August 2003, Revision 0



GRAPHIC SCALE



--- Property Line

● Monitoring Well Location

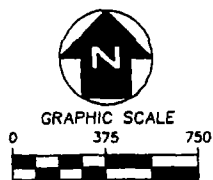
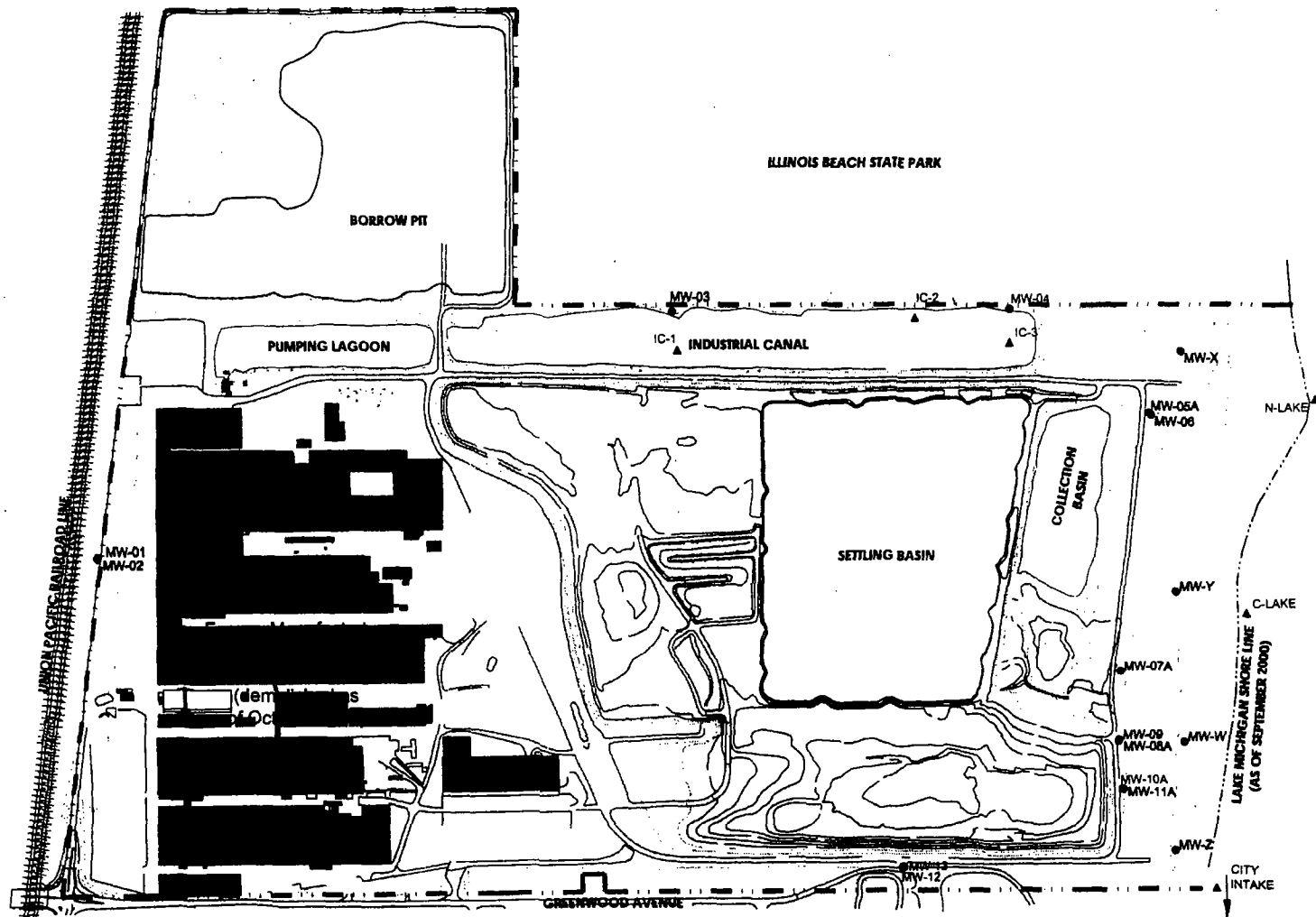
▲ Surface Water Sampling Location

August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

PHASE I GROUNDWATER & SURFACE WATER MONITORING LOCATIONS

Exhibit 7 to First Amended Consent Decree in
United States et al. v. Manville Sales Corporation
(N.D. Ill. Civ. Action No. 88C 630)

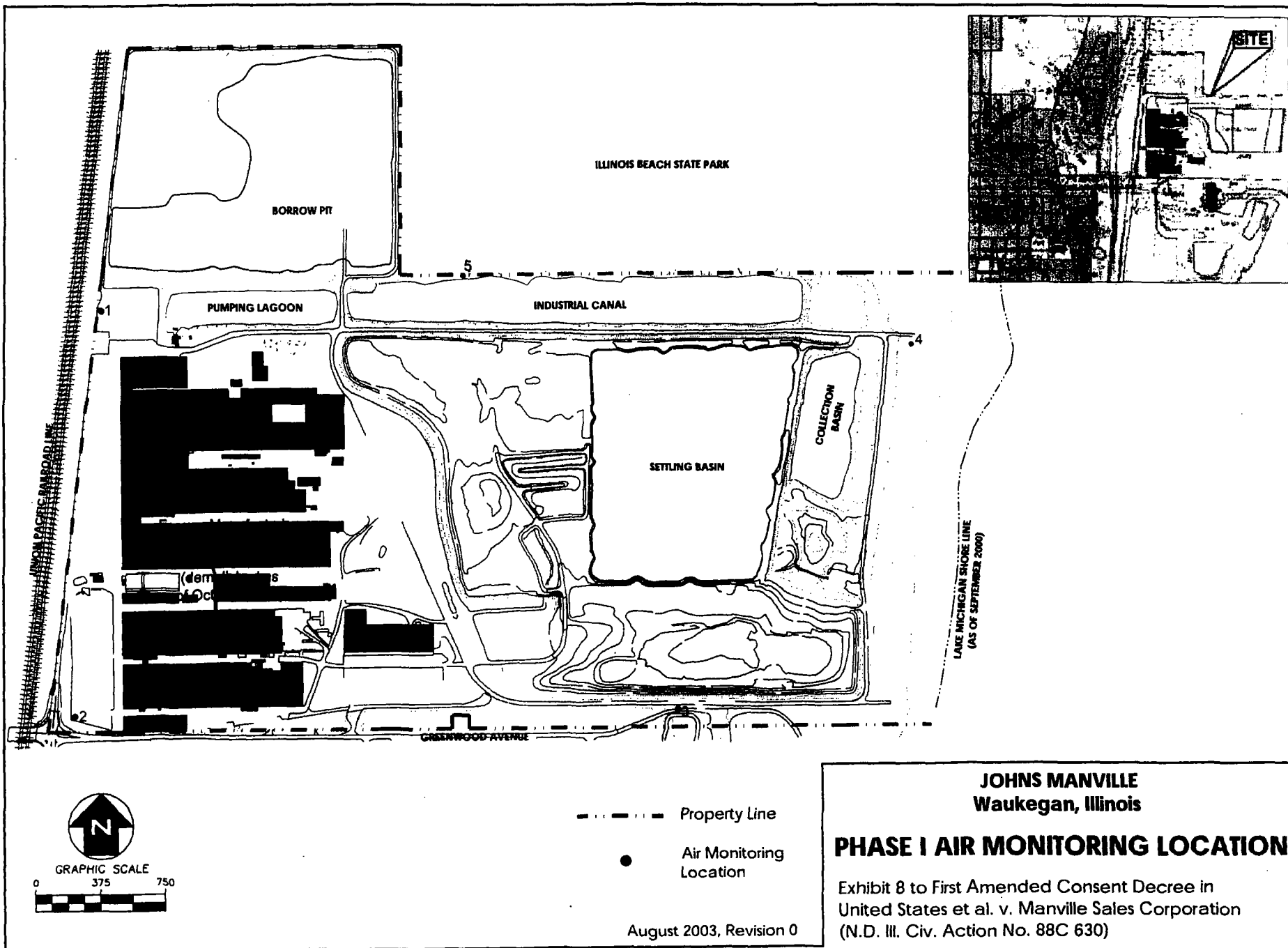


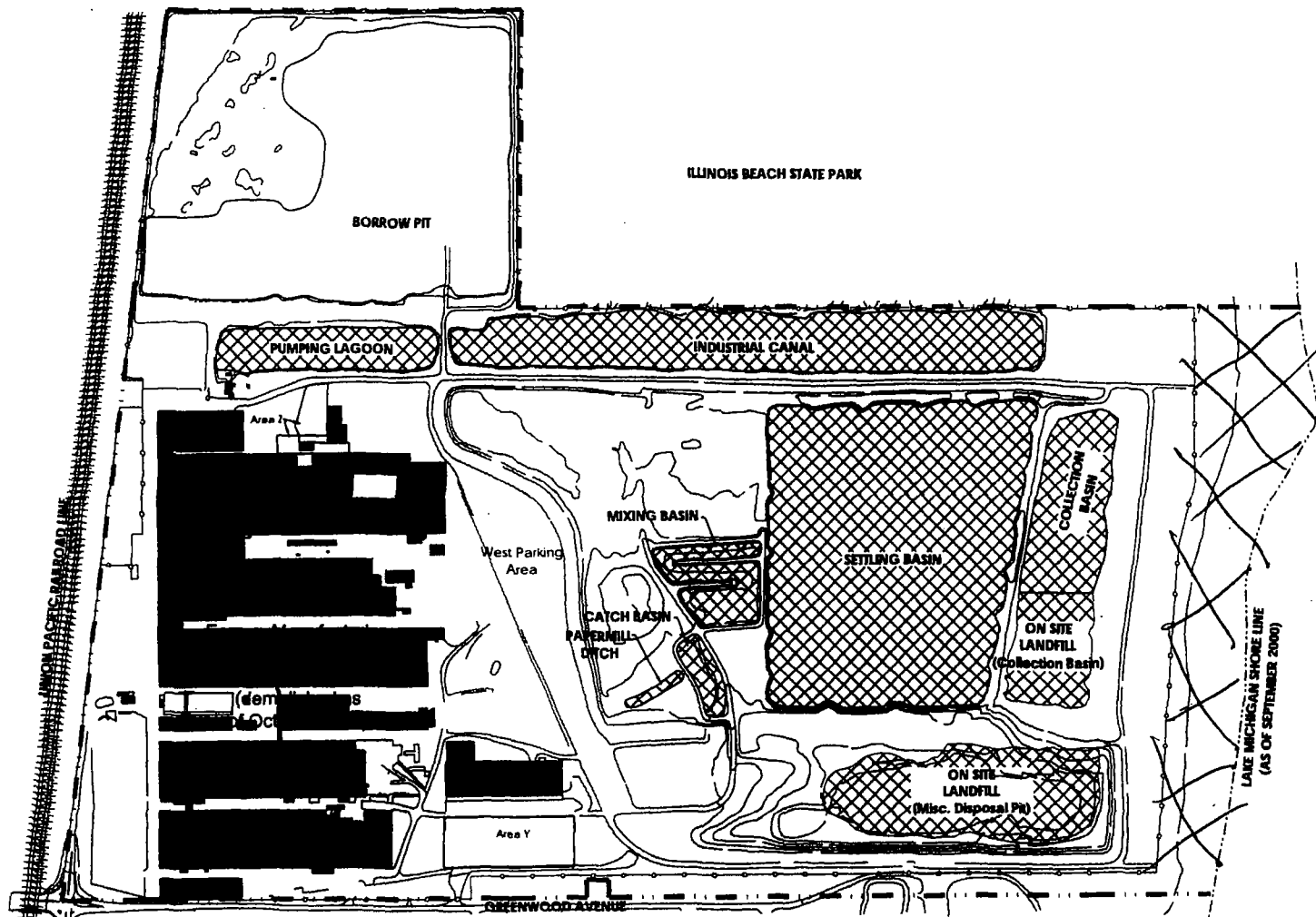
- Property Line
- Monitoring Well Location
- ▲ Surface Water Sampling Location

August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois
PHASE II GROUNDWATER & SURFACE
WATER MONITORING LOCATIONS

Exhibit 7a to First Amended Consent Decree in
 United States et al. v. Manville Sales Corporation
 (N.D. Ill. Civ. Action No. 88C 630)





GRAPHIC SCALE

0 375 750

--- Property Line



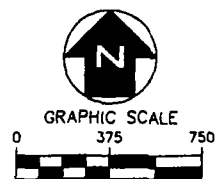
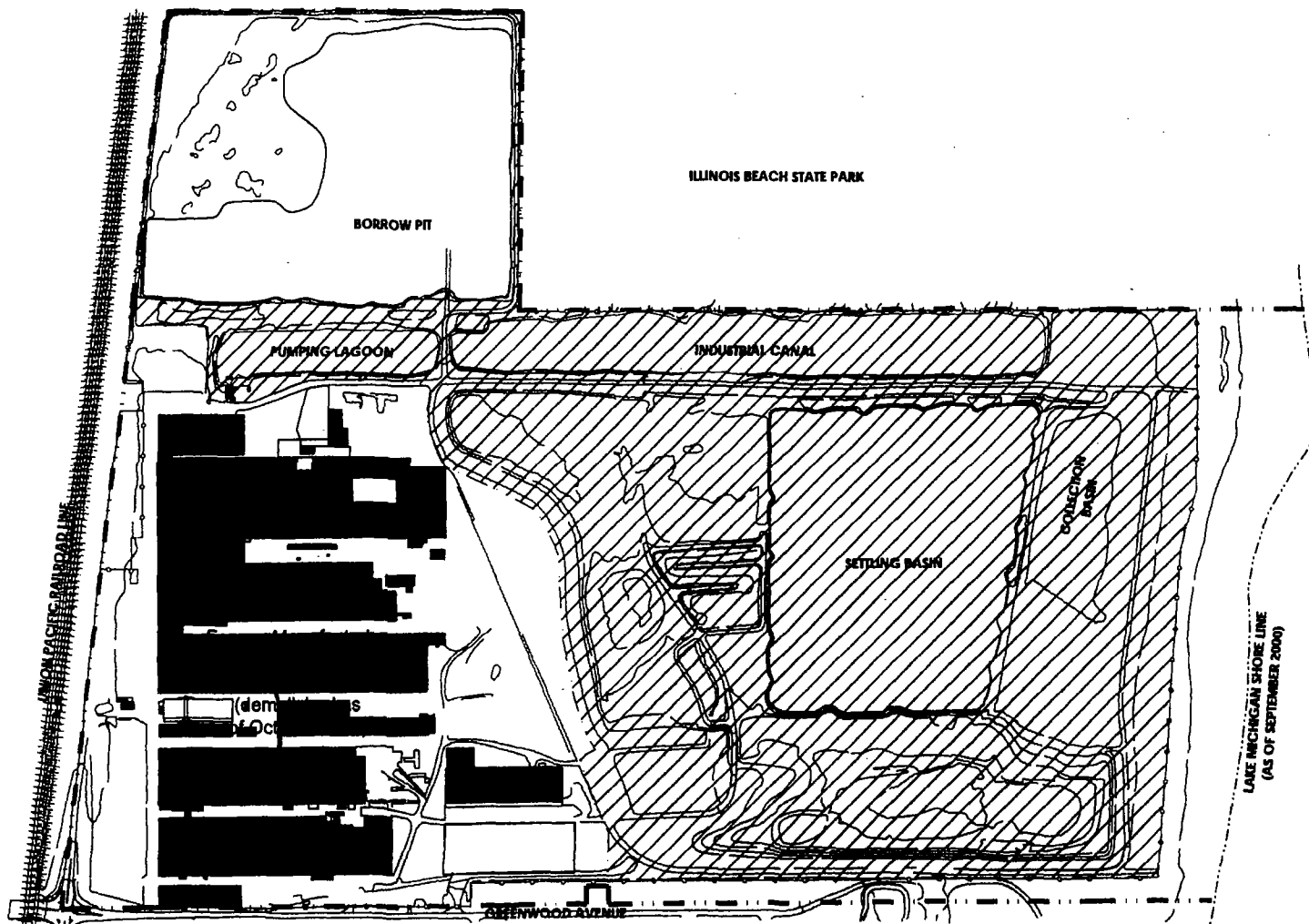
Phase II Work Plan Areas

August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

PHASE II WORK PLAN AREAS

Exhibit 9 to First Amended Consent Decree in
United States et al. v. Manville Sales Corporation
(N.D. Ill. Civ. Action No. 88C 630)



August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

PARAGRAPH 25(a) LAND USE RESTRICTIONS AREA

Exhibit 10 to First Amended Consent Decree in
United States et al. v. Manville Sales Corporation
(N.D. Ill. Civ. Action No. 88C 630)

EXHIBIT 11
to First Amended Consent Decree
United States et al. v. Manville
(N.D. Ill. Civ. Action No. 88C 630)

Prepared By:

Return To:

NOTICE

1. This _____ day of _____, 20 __, JOHNS MANVILLE, a Delaware corporation, the current owner of the real property located in the County of Lake, State of Illinois, more particularly described on Appendix 1, which is attached hereto and made a part hereof (the "Property"), hereby records this Notice that the Property is subject to certain land and groundwater use restrictions.
2. The Property consists of the approximately 150-acre Johns Manville Waukegan Disposal Area Superfund Site ("the Site or the NPL Site"), which the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983.
3. The Property was used for the disposal of asbestos-containing waste material. The survey plot, including the location, depth, area and quantity of asbestos-containing waste disposed of within the Property, has been filed with the Administrator of the U.S. EPA. The Property is subject to the National Emission Standard for Asbestos set forth at 40 C.F.R. Part 61, Subpart M.
4. In a Record of Decision dated June 30, 1987 (the "ROD"), as modified by an Explanation of Significant Differences dated February 9, 1993, and a Second Explanation of Significant Differences dated September 22, 2000, the U.S. EPA Region 5 Regional Administrator selected a remedial action for the NPL Site that provided, in part, for the placement of a vegetative soil cover, asphalt cover, or riprap cover on asbestos-containing waste on the Property and for the placement of land use restrictions on the Property.
5. Johns Manville has agreed to implement the remedial action and the land use restrictions on the Property, in a Consent Decree entered on March 18, 1988, ("Consent Decree") and a First Amended Consent Decree entered on _____, 2003, ("First Amended Consent Decree") in the case of *United States of America and the State of*

Illinois v. Manville Sales Corporation, Civil Action No. 88 C 630 (N.D. Ill.), which requires Johns Manville: (a) to provide a permanent right of access over the Property to the State of Illinois and the United States for purposes of implementing, facilitating and monitoring the remedial action referenced above; (b) to limit permanently the use of the Property, for the purpose of protecting human health, the environment and the remedial action; and (c) to reserve an environmental easement and restrictive covenants running with the land that imposes the land use restrictions listed in paragraph 6 below and is enforceable by the United States and the State of Illinois, if Johns Manville conveys any interest in the Property.

6. RESTRICTIONS ON USE: The following restrictions apply to the Property, unless and until they are modified in accordance with Paragraph 7:

- 6.1 No disturbance of cover: Except as provided in a plan approved by U.S. EPA with Illinois EPA concurrence, no action shall be taken to excavate or drill or intrude into, or penetrate or otherwise disturb the facility cover demarcated in Appendix 2, which includes the vegetated soil cover, asphalt cover and riprap, or the soils below such vegetative soil cover or asphalt cover or riprap. The vegetative soil cover (consisting of 24 inches of compacted non-asbestos-containing soils and vegetation cover as defined in the Consent Decree and First Amended Consent Decree), asphalt cover and riprap overlay asbestos-containing waste materials on the Property.
- 6.2 Maintenance of water levels: Surface water on the Property shall be maintained at such levels to ensure that no water-covered asbestos-containing waste materials become exposed until closure of the paper mill ditch, catch basin, mixing basin stages 3, 4 and 5, and settling basin in accordance with the work plans as approved by U.S. EPA with Illinois EPA concurrence.
- 6.3 No interference with remedy: There shall be no interference of any sort, with the construction, operation, maintenance, monitoring, efficacy, or physical integrity of any component, structure, or improvement resulting from or relating to the remedial action on the Property implemented pursuant to the Consent Decree and First Amended Consent Decree. No action shall be taken that would cause covered waste materials to become exposed.
- 6.4 Land uses: The Property shall not be used for any of the following purposes:
 - (a) Residential, including any dwelling units and rooming units, mobile homes or factory built housing, camping facilities, hotels, or other unit constructed or installed for occupancy on a 24-hour basis;
 - (b) A hospital for humans;
 - (c) Educational institutions such as a public or private school;
 - (d) A day care center for children;

- (e) Any purpose involving occupancy on a 24-hour basis; or
- (f) Any use that would disturb or penetrate the facility cover as described in subparagraph 6.1 or interfere with the remedy as described in subparagraph 6.3 (e.g. construction of buildings).

6.5 Ground water uses: No activities shall be conducted on the Property that extract, consume, or otherwise use any groundwater from the Property, nor shall any wells be constructed on the Property for purposes other than ground water monitoring, unless approved by U.S. EPA with State of Illinois concurrence.

7. MODIFICATION OF RESTRICTIONS: The land and groundwater use restrictions shall continue until and unless U.S. EPA, with the concurrence of Illinois EPA, approves the modification or rescission of the restrictions. U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 6.1-6.5 in writing, as authorized by law. The owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 6.1-6.5 by submitting to U.S. EPA, the State of Illinois and Johns Manville a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, any proposed revisions to this notice and any proposed changes to the environmental easement and restrictive covenants applicable to the Property. Each application for termination or modification of any restriction set forth in subparagraphs 6.1- 6.5 shall include a demonstration by the owner of the Property that the requested termination or modification will not interfere with, impair or reduce:

- a) the effectiveness of any remedial measures undertaken pursuant to the Consent Decree and First Amended Consent Decree;
- b) the long term protectiveness of the Remedial Action; or
- c) protection of human health and the environment.

If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, U.S. EPA will notify the owner of the Property in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied owner's application. Any approved modification of the use restrictions shall be recorded with the Recorder of Deeds, Lake County, Illinois. Johns Manville reserves its right to use the dispute resolution procedures in Section XII of the First Amended Consent Decree concerning U.S. EPA's determination on an owner's application.

8. Access: The Property is subject to an irrevocable, permanent and continuing right of access by the United States, Illinois EPA and Johns Manville at all reasonable times for purposes listed below.

- a) Implementing response actions in any CERCLA decision document affecting the Property or any associated work plans;

- b) Verifying any data or information submitted to U.S. EPA and Illinois EPA;
 - c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of the First Amended Consent Decree;
 - d) Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, and obtaining split or duplicate samples;
 - e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations and by CERCLA;
 - f) Implementing additional or new response actions if the U.S. EPA with the concurrence of Illinois EPA, pursuant to authority under applicable law, determine that such actions are necessary.
9. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect U.S. EPA's or the State of Illinois' rights of entry and access or authority to take response actions under CERCLA, the NCP, or other federal or state law.
10. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is intended or conveyed by this instrument.
11. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth in Paragraph 8 and 9 above, the United States, State of Illinois and/or Johns Manville may enter the Property from time to time for the purposes of performing inspections, overseeing remedy implementation or enforcing the restrictions set forth in subparagraphs 6.1-6.5 above after permission from or reasonable notice to the owners or the owners' representative.
12. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

Johns Manville
717 17th St.
Denver CO 80202
Attn: Legal Department
Environmental

United States Environmental Protection Agency
Superfund Division
77 W. Jackson Blvd.
Mail Code: SR-6J
Chicago IL 60604-3590

13. Appendices

Executed this _____ day of _____, 200 .

By: _____

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of Colorado

My Commission Expires: _____

EXHIBIT 12
to First Amended Consent Decree
United States et al. v. Manville
(N.D. Ill. Civ. Action No. 88C 630)

Prepared by:

Return To:

NOTICE

1. This _____ day of _____, 20 __, JOHNS MANVILLE, a Delaware corporation, the current owner of the real property located in the County of Lake, State of Illinois, more particularly described on Appendix 1, which is attached hereto and made a part hereof (the "Property"), hereby records this Notice that the Property is subject to certain groundwater and land use restrictions.
2. On ____, Johns Manville entered the Property in the Illinois Site Remediation Program ("SRP") for the purposes of investigating and remediating the Property.
3. Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the U.S. Environmental Protection Agency ("EPA") placed the approximately 150-acre Johns Manville Waukegan Disposal Area Superfund Site ("the Site or the NPL Site"), on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983.
4. The Property is adjacent to and on the west side of the NPL Site and was part of the former manufacturing plant area owned and operated by Johns Manville.
5. In a Record of Decision dated June 30, 1987 (the "ROD"), as modified by an Explanation of Significant Differences dated February 9, 1993, and a Second Explanation of Significant Differences dated September 22, 2000, the U.S. EPA Region 5 Regional Administrator selected a remedial action for the NPL Site that provided, in part, for the placement of groundwater and land use restrictions at and near the NPL Site;
6. Johns Manville has agreed to implement the remedial action and the groundwater and land use restrictions on the Property, in a Consent Decree entered on March 18, 1988, ("Consent Decree") and a First Amended Consent Decree entered on

_____, 2003, ("First Amended Consent Decree") in the case of *United States of America and the State of Illinois v. Manville Sales Corporation*, Civil Action No. 88 C 630 (N.D. Ill.).

7. **RESTRICTIONS ON USE:** The following restrictions apply to the Property, unless and until it is modified in accordance with Paragraph 8.

Ground water uses: No activities shall be conducted on the Property that extract, consume, or otherwise use any groundwater from the Property, nor shall any wells be constructed on the Property for purposes other than ground water monitoring, unless approved by U.S. EPA with State of Illinois concurrence.

Restrictions applicable to Site Y, Site Z and the western parking lot portion of the Property as identified in Appendix 2:

No action shall be taken to drill or intrude into, penetrate or otherwise disturb the asphalt cover on Site Y, Site Z and the western parking lot portion of the Property as identified in Appendix 2.

8. **MODIFICATION OF RESTRICTIONS:** The groundwater and land use restrictions shall continue until and unless U.S. EPA, with the concurrence of Illinois EPA, approves the modification or rescission of the restrictions. U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in paragraph 7 in writing, as authorized by law. The owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth in paragraph 7 by submitting to U.S. EPA, the State of Illinois and Johns Manville a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, any proposed revisions to this Notice and any proposed changes to the environmental easement and restrictive covenant applicable to the Property. Each application for termination or modification of any these set forth in paragraph 7 shall include a demonstration by the owner of the Property that the requested termination or modification will not interfere with, impair or reduce:

- a) the effectiveness of any remedial measures undertaken pursuant to the Consent Decree and First Amended Consent Decree;
- b) the long term protectiveness of the Remedial Action; or
- c) protection of human health and the environment.

If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, U.S. EPA will notify the owner of the Property in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied owner's application. Any approved modification of the use restrictions shall be recorded with the Recorder of Deeds, Lake County, Illinois. Johns Manville reserves its

right to use the dispute resolution procedures in Section XII of the First Amended Consent Decree concerning U.S. EPA's determination on an owner's application.

9. Access: The Property is subject to an irrevocable, permanent and continuing right of access by the United States, Illinois EPA and Johns Manville at all reasonable times to the Property for purposes listed below.
 - a) *Implementing response actions in any CERCLA decision document affecting the Property or any associated work plans;*
 - b) *Verifying any data or information submitted to U.S. EPA and Illinois EPA;*
 - c) *Verifying that no action is being taken on the Property in violation of the terms of this instrument or of the First Amended Consent Decree;*
 - d) *Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, and obtaining split or duplicate samples;*
 - e) *Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations and by CERCLA;*
 - f) *Implementing additional or new response actions if the U.S. EPA with the concurrence of Illinois EPA, pursuant to authority under applicable law, determine that such actions are necessary.*
10. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect U.S. EPA's or the State of Illinois' rights of entry and access or authority to take response actions under CERCLA, the NCP, or other federal or state law.
11. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is intended or conveyed by this instrument.
12. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth in paragraph 9 above, the United States, State of Illinois and/or Johns Manville may enter the Property from time to time for the purposes of performing inspections, overseeing remedy implementation or enforcing the restrictions set forth in paragraph 7 above after permission from or reasonable notice to the owners or the owners' representative.
13. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

Johns Manville
717 17th St.
Denver CO 80202
Attn: Legal Department
Environmental

United States Environmental Protection Agency
Superfund Division
77 W. Jackson Blvd.
Mail Code: SR-6J
Chicago IL 60604-3590

Illinois Environmental Protection Agency
Federal Site Remediation Section
Division of Remediation Management
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

14. Appendices

Appendix 1	-	Legal description of the Property
Appendix 2	-	Asphalt Cover on Site Y, Site Z and western parking lot

IN WITNESS WHEREOF, Johns Manville has caused this Notice to be signed in its name.

Executed this _____ day of _____, 200_.

JOHNS MANVILLE

By: _____

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

On this __ day of ____, 200__, before me, the undersigned, a Notary Public in and for the State of Colorado, duly commissioned and sworn, personally appeared ____, known to be the _____ of Johns Manville, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of Colorado

My Commission Expires: _____.

EXHIBIT 13
to First Amended Consent Decree
United States et al. v. Manville
(N.D. Ill. Civ. Action No. 88C 630)

Prepared by:

Return to:

WARRANTY DEED
WITH RESERVATION OF
ENVIRONMENTAL EASEMENT
and
DECLARATION OF RESTRICTIVE COVENANTS

This _____ day of _____, 20____, the Grantor, JOHNS MANVILLE ("JM"), a Delaware corporation, for and in consideration of _____, conveys and warrants to Grantee, _____, a _____ corporation, the real estate located in the County of Lake, State of Illinois, more particularly described on Appendix 1, which is attached hereto and made a part hereof (the "Property"), subject to the reservation of an Environmental Easement and Declaration of Restrictive Covenants more particularly described as follows:

WITNESSETH:

WHEREAS, the Property is part of the approximately 150 acre Johns Manville Waukegan Disposal Area Superfund Site ("the Site or the NPL Site"), which the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983;

WHEREAS, in a Record of Decision dated June 30, 1987 (the "ROD"), as modified by an Explanation of Significant Differences dated February 9, 1993, and a Second Explanation of Significant Differences dated September 22, 2000, the U.S. EPA Region 5 Regional Administrator selected a remedial action for the NPL Site that provided, in part, for the placement of a vegetative soil cover, asphalt cover, or riprap cover on asbestos-containing waste on the Site, including the Property, and for the placement of land use restrictions on the Site, including the Property;

WHEREAS, the Site, including the Property, was used for the disposal of asbestos-containing waste material. The survey plot, including the location, depth, area and quantity of asbestos-containing waste disposed of within the Property, is set forth in Appendix 4. The Property is subject to the National Emission Standard for Asbestos set forth at 40 C.F.R. Part 61, Subpart M. ;

WHEREAS, the Grantor has agreed to implement the remedial action and the land use restrictions on the Site, including the Property, in a Consent Decree entered on March 18, 1988, ("Consent Decree") and a First Amended Consent Decree entered on _____, 2003, ("First Amended Consent Decree") in the case of *United States of America and the State of Illinois v. Manville Sales Corporation*, Civil Action No. 88 C 630 (N.D. Ill.), which require the Grantor: 1) to provide a permanent right of access over the Site, including the Property, to the State of Illinois and the United States for purposes of implementing, facilitating and monitoring the remedial action referenced above; and 2) to limit permanently the use of the Site, including the Property, for the purpose of preventing interference with the remedial action and thereby protecting human health and the environment;

NOW, THEREFORE:

1.0 AGREEMENT AND RESERVATION: Grantor, on behalf of itself, its successors and assigns, in consideration of the foregoing and the specific agreements hereinafter made by Grantee, for itself and its successors and assigns, to take subject to and abide by all reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth in this Deed, does hereby reserve a right to restrict the use of the subject land in perpetuity, the right to enforce said restrictions, a right of access and the right to an environmental easement over the land, all as more particularly hereinafter set forth.

2.0 THIRD PARTY BENEFICIARIES: Grantor on behalf of itself and its successors, transferees and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the United States, acting by and through U.S. EPA, and its successors and assigns, and the State of Illinois, acting by and through Illinois EPA, and its successors and assigns, shall be Third Party Beneficiaries of all the benefits and rights of the easements, reservations, restrictions, covenants, exceptions, notifications, conditions and agreements herein, and that the Third Party Beneficiaries shall have the right to enforce the easements and restrictions described herein.

3.0 PURPOSE: The purpose of this reservation is to retain in Grantor real property rights, which will run with the land, to facilitate the remediation of past environmental contamination; to protect human health and the environment by reducing the risk of exposure to contaminants; to provide for the long-term protectiveness of the remedial action; and to accomplish these goals in a manner that allows the redevelopment and beneficial reuse of the Property to the extent reasonably possible.

4.0 RESTRICTIONS ON USE: The parties intend that the restrictions and covenants that follow apply to the use of the Property, run with the land for the benefit of the Grantor and the Third Party Beneficiaries, and are binding upon:

- a) the Grantee and its successors, transferees, and assigns or persons acting under their direction and control; and
- b) any subsequent owner, occupants or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

4.1 No disturbance of cover: Except as provided in a plan approved by U.S. EPA with Illinois EPA concurrence and except as provided in Paragraph 5, no action shall be taken to excavate or drill or intrude into, or penetrate or otherwise disturb the facility cover demarcated in Appendix 3, which includes the vegetated soil cover, asphalt cover and riprap, or the soils below such vegetative soil cover or asphalt cover or riprap. The vegetative soil cover (consisting of 24 inches of compacted non-asbestos-containing soils and vegetation cover as defined in the Consent Decree and First Amended Consent Decree), asphalt cover and riprap overlay asbestos-containing waste materials on the Property.

4.2 Maintenance of water levels: Surface water on the Property shall be maintained at such levels to ensure that no water-covered asbestos-containing waste materials become exposed until closure of the paper mill ditch, catch basin, mixing basin stages 3, 4 and 5, and settling basin in accordance with work plans as approved by U.S. EPA with Illinois EPA concurrence.

4.3 No interference with remedy: There shall be no interference of any sort, with the construction, operation, maintenance, monitoring, efficacy, or physical integrity of any component, structure, or improvement resulting from or relating to the remedial action on the Property implemented pursuant to the Consent Decree and First Amended Consent Decree. No action shall be taken that would cause covered waste materials to become exposed.

4.4 Land uses: Unless modified in accordance with paragraph 5 of this instrument, the Property shall not be used for any of the following purposes:

- (a) Residential, including any dwelling units and rooming units, mobile homes or factory built housing, camping facilities, hotels, or other unit constructed or installed for occupancy on a 24-hour basis;
- (b) A hospital for humans;
- (c) Educational institutions such as a public or private school;
- (d) A day care center for children;
- (e) Any purpose involving occupancy on a 24-hour basis; or
- (f) Any use that would disturb or penetrate the facility cover described in subparagraph 4.1 or interfere with the remedy described in subparagraph 4.3 (e.g. construction of buildings).

No change shall be made to the land use restrictions in this subparagraph, except pursuant to the procedures in Paragraph 5 of this instrument, and except with the consent of any other federal, state or local governmental agencies having jurisdiction over the proposed activities, and subject to applicable statutes, ordinances, rules and regulations in effect at such time.

4.5 Ground water uses: No activities shall be conducted on the Property that extract, consume, or otherwise use any groundwater from the Property, unless approved by U.S. EPA with State of Illinois concurrence nor shall any wells be constructed on the Property for purposes other than ground water monitoring, unless approved by U.S. EPA with State of Illinois concurrence.

4.6 Effective date of restrictions: The foregoing restrictions on use of the Property are subject to applicable statutes, ordinances, rules and regulations, and take effect upon the date of execution of this document and remain in effect until both U.S. EPA and the State of Illinois issue a written determination to either modify or terminate the conditions and restrictions pursuant to Paragraph 5 below.

5. MODIFICATION OF RESTRICTIONS: The restrictive covenants in the preceding subparagraphs shall continue unless and until U.S. EPA, with the concurrence of Illinois EPA, approves the modification or rescission of these restrictive covenants. U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 4.1- 4.5 in writing, as authorized by law. The owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 4.1- 4.5 by submitting to U.S. EPA, the State of Illinois and Johns Manville, a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and any proposed revisions to the environmental easement/restrictive covenants in this Deed. Each application for termination or modification of any restriction set forth in subparagraphs 4.1- 4.5 shall include a demonstration by the owner of the Property that the requested termination or modification will not interfere with, impair or reduce:

- a) the effectiveness of any remedial measures undertaken pursuant to the Consent Decree and First Amended Consent Decree;
- b) the long term protectiveness of the Remedial Action; or
- c) protection of human health and the environment.

If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (a) through (c), above, U.S. EPA will notify the owner of the Property in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied owner's application. Any modification of these restrictive covenants shall be recorded with Recorder of Deeds, Lake County, Illinois. Johns Manville reserves its right to use the dispute resolution procedures in Section XII of the First Amended Consent Decree concerning U.S. EPA's determination on an owner's application.

6. MONITORING WELLS: Grantor reserves access to all well equipment and improvements, and exclusive use of the existing monitoring wells/piezometers located on the Property (as identified below) together with access across the property as required for the purpose of maintaining, improving, monitoring and/or removing the wells/piezometers.

[Location of wells here]

7. ENVIRONMENTAL EASEMENT: Reserving to the Grantor, for its use, and for the use of the Third Party Beneficiaries, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes listed below.

- a) Implementing response actions in any CERCLA decision document affecting the Property or any associated work plans;
- b) Verifying any data or information submitted to U.S. EPA and Illinois EPA;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of the First Amended Consent Decree;
- d) Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, and obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including, but not limited to, reviews required by applicable statutes and/or regulations and by CERCLA;
- f) Implementing additional or new response actions if the U.S. EPA and/or Illinois EPA, pursuant to authority under applicable law, determine that such actions are necessary.

8. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect U.S. EPA's or the Illinois EPA's or the Illinois Attorney General's rights of entry and access or U.S. EPA's or the Illinois EPA's or the Illinois Attorney General's authority to take response actions under CERCLA, the NCP, or other federal or state law.

9. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is intended or conveyed by this instrument.

10. NOTICE REQUIREMENT FOR TRANSFER OF PROPERTY: Grantee agrees to include in any instrument conveying any interest in any portion of the Property, including, but not limited to deeds, leases and mortgages, a notice in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY:

(1) IS SUBJECT TO ACCESS RIGHTS AND LAND USE RESTRICTIONS CONTAINED IN A DEED WITH RESERVATION OF ENVIRONMENTAL EASEMENT AND RESTRICTIVE COVENANTS IN FAVOR OF JOHNS MANVILLE AS GRANTOR TO _____ AS GRANTEE, DATED ____ AND RECORDED IN THE OFFICE OF THE

RECORDER OF DEEDS, LAKE COUNTY, ILLINOIS, ON _____ 200_,
IN BOOK ___, PAGE ___. THESE RIGHTS AND RESTRICTIONS RUN
WITH THE LAND AND ARE ENFORCEABLE BY THE UNITED STATES,
THE STATE OF ILLINOIS, AND JOHNS MANVILLE.

(2) THE PROPERTY IS PART OF AN NPL SITE THAT WAS USED FOR THE
DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL. APPENDIX
4 OF THE DEED SETS FORTH THE SURVEY PLOT, LOCATION, DEPTH,
AREA AND QUANTITY OF ASBESTOS-CONTAINING WASTE DISPOSED
OF WITHIN THE PROPERTY AS REQUIRED BY 40 C.F.R § 61.151(e) AND
40 C.F.R. § 61.154(f). THE PROPERTY IS SUBJECT TO THE NATIONAL
EMISSIONS STANDARD FOR ASBESTOS SET FORTH AT 40 C.F.R. PART
61, SUBPART M.

(3) EPA SELECTED A REMEDY FOR THE NPL SITE, INCLUDING THE
PROPERTY, AND JOHNS MANVILLE HAS ENTERED INTO A CONSENT
DECREE WHICH WAS ENTERED ON MARCH 18, 1988, AND
SUBSEQUENTLY AMENDED AND ENTERED ON _____ IN THE CASE
OF *United States of America and the State of Illinois v. Manville Sales
Corporation*, Civil Action No. 88 C 630 (N.D. Ill.) REQUIRING
IMPLEMENTATION OF THE REMEDY AND RESTRICTIONS ON THE USE
OF THE PROPERTY.

11. ADMINISTRATIVE JURISDICTION: The federal agency having administrative
jurisdiction over the interests acquired by the United States by this instrument is the U.S. EPA
and any successor departments or agencies of the United States. The state agency having
administrative jurisdiction over the interests acquired by the State of Illinois by this instrument is
the Illinois EPA and any successor departments or agencies of the State of Illinois.

12. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth
in Paragraph 6 and 7 above, the United States, State of Illinois and/or the Grantor may enter the
Property from time to time for the purposes of performing inspections, overseeing remedy
implementation or enforcing the restrictions set forth in subparagraphs 4.1-4.5 above after
permission from or reasonable notice to the owners or the owners' representative or, if
applicable, the lessee. The Grantor and the United States and the State of Illinois as Third Party
Beneficiaries shall be entitled to enforce the terms of this instrument in a judicial action seeking
specific performance or other applicable remedies at law or in equity. The right to so enforce the
conditions and restrictions in this instrument are in addition to any other remedies that may be
available, including, but not limited to, remedies under CERCLA. Enforcing the terms of this
instrument shall be at the discretion of the Grantor, the United States or the State and any
forbearance, delay or omission to exercise their rights under this instrument in the event of a
breach of any term of this Agreement shall not be deemed a waiver by the Grantor or the United
States or the State of such terms, or any other term, or any rights of the Grantor or Grantee or the
Third Party Beneficiaries under this instrument. The easement and covenants shall inure to the

benefit of the public in general and the Property and are enforceable by the Grantor, the United States and the State of Illinois.

13. RESERVATION OF DEFENSES: Nothing in this instrument shall be construed to enlarge the jurisdiction of federal courts or to create subject matter jurisdiction to adjudicate any claims against U.S. EPA and the Illinois EPA or otherwise operate as a waiver of any sovereign immunity of the United States and the State of Illinois, and the United States and the State of Illinois expressly reserve all rights and defenses they may have in connection with any action initiated by Grantor pursuant to this instrument.

14. WAIVER OF CERTAIN DEFENSES: Grantee hereby waives any defense of laches, estoppel, or prescription. Grantee reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are compatible with the restrictions and rights granted here.

15. COVENANTS:

a) Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Appendix 2 attached hereto. Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken or will be taken pursuant to the Consent Decree and the First Amended Consent Decree, and any additional remedial action as defined by the Consent Decree and the First Amended Consent Decree found to be necessary after the date of this instrument regarding hazardous substances existing prior to the date of this instrument shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

b) Grantee covenants for itself, its successors and assigns that it shall include and otherwise make legally binding the above access rights and land use restrictions in all subsequent leases, transfer or conveyance documents relating to the Property subject hereto. Notwithstanding this provision, failure to include these access rights and land use restrictions in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns. The Grantee, for itself, its successors and assigns, covenants that it will not undertake or allow any activity on or use of the Property that would violate the land use restrictions contained herein.

16. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Johns Manville
717 17th St.
Denver CO 80202
Attn: Legal Department
Environmental

To Grantee

To Third Party Beneficiaries

United States Environmental Protection Agency
Superfund Division
77 W. Jackson Blvd.
Mail Code: SR-6J
Chicago IL 60604-3590

Illinois Environmental Protection Agency
Federal Site Remediation Section
Division of Remediation Management
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

17. GENERAL PROVISIONS:

a) Controlling law: The interpretation and performance of the easements and restrictive covenants shall be governed by the laws of the United States and the State of Illinois, as applicable. The right to enforce the conditions and restrictions in this instrument are in addition to other rights and remedies that may be available, including, but not limited to, administrative and judicial remedies under CERCLA.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantee's title in any respect.

f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, 1) the parties hereto and their respective personal representatives, heirs, successors, and assigns as well as persons acting under their direction and control; and 2) any subsequent owner, occupants or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control. The covenants, terms, conditions, and restrictions of this instrument shall continue as a servitude running in perpetuity with the Property. The rights of the Grantee under this instrument are freely assignable, subject to the notice provisions hereof. The rights of the U.S. EPA and Illinois EPA are freely assignable to any public entity, subject to the notice provisions hereof.

g) Termination of rights and obligations: The Grantee's rights and obligations under this instrument terminate upon transfer of the Grantee's interest in the Property, except that liability for acts or omissions occurring prior to transfer as well as defenses thereto shall survive transfer.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

18. Appendices

Appendix 1	-	Legal description of the Property
Appendix 2	-	Permitted title encumbrances
Appendix 3	-	Land Cover
Appendix 4	-	Asbestos Survey Plot.

IN WITNESS WHEREOF, Grantor has caused this Warranty Deed With Reservation of Environmental Easement and Restrictive Covenants to be signed in its name.

Executed this _____ day of _____, 200__.

JOHNS MANVILLE

By: _____

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

On this __ day of ____, 200__, before me, the undersigned, a Notary Public in and for the State of Colorado, duly commissioned and sworn, personally appeared ____, known to be the _____ of Johns Manville, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of Colorado

My Commission Expires: _____

I, the undersigned Grantee, do hereby accept the herein-described Property, subject to the easements, restrictive covenants, notices, agreements, reservations, conditions, and exceptions hereinabove expressed.

Executed this _____ day of _____, 200_, in _____, State of _____.

[ENTITY]

BY: _____

TITLE: _____

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing Warranty Deed With Reservation of Environmental Protection Easements was acknowledged before me this _____ day of _____, 200_, by _____.

Notary Public

My commission expires:

EXHIBIT 14
to First Amended Consent Decree
United States et al. v. Manville
(N.D. Ill. Civ. Action No. 88C 630)

Prepared by:

Return to:

WARRANTY DEED
WITH RESERVATION OF
ENVIRONMENTAL EASEMENT
and
DECLARATION OF RESTRICTIVE COVENANTS

This _____ day of _____, 20____, the Grantor, JOHNS MANVILLE ("JM"), a Delaware corporation, for and in consideration of _____, conveys and warrants to Grantee, _____, a _____ corporation, the real estate located in the County of Lake, State of Illinois, more particularly described on Appendix 1, which is attached hereto and made a part hereof (the "Property"), subject to the reservation of an Environmental Easement and Declaration of Restrictive Covenants more particularly described as follows:

WITNESSETH:

WHEREAS, on _____, Johns Manville entered the Property in the Illinois Site Remediation Program ("SRP") for the purposes of investigating and remediating the Property;

WHEREAS, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the U.S. Environmental Protection Agency ("EPA") placed the Johns-Manville Waukegan Disposal Area on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983;

WHEREAS, the Property is adjacent to and on the west side of the NPL Site and was part of the former manufacturing plant area owned and operated by Johns Manville;

WHEREAS, in a Record of Decision dated June 30, 1987 (the "ROD"), as modified by an Explanation of Significant Differences dated February 9, 1993, and a Second Explanation of Significant Differences dated September 22, 2000, the U.S. EPA Region 5 Regional Administrator selected a remedial action for the NPL Site that provided, in part, for the placement of groundwater and land use restrictions at and near the NPL Site;

WHEREAS, the remedial action for the NPL Site prohibits any activities that extract, consume, or otherwise use any groundwater from the NPL Site and the Property, and the construction of any well on the Property for purposes other than groundwater monitoring, unless approved pursuant to Paragraph 5 below;

WHEREAS, the remedial action for the NPL Site prohibits interference with the asphalt cap on Site Y, Site Z and the western parking lot of the Property as identified in Appendix 2;

WHEREAS, the Grantor has agreed to impose the groundwater and land use restrictions on the Property, in a Consent Decree entered on or about March 18, 1988, ("Consent Decree") and a First Amended Consent Decree entered on _____, 2003, ("First Amended Consent Decree") in the case of *United States of America and the State of Illinois v. Manville Sales Corporation*, Civil Action No. 88 C 630 (N.D. Ill.).

NOW, THEREFORE:

1.0 **AGREEMENT AND RESERVATION**: Grantor, on behalf of itself, its successors and assigns, in consideration of the foregoing and the specific agreements hereinafter made by Grantee, for itself and its successors and assigns, to take subject to and abide by all reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth in this Deed, does hereby reserve a right to restrict the use of the subject land in perpetuity, the right to enforce said restrictions, a right of access to and the right to an environmental easement over the land, all as more particularly hereinafter set forth.

2.0 **THIRD PARTY BENEFICIARIES**: Grantor on behalf of itself and its successors, transferees and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the United States, acting by and through U.S. EPA, and its successors and assigns, and the State of Illinois, acting by and through Illinois EPA, and its successors and assigns, shall be Third Party Beneficiaries of all the benefits and rights of the easements, reservations, restrictions, covenants, exceptions, notifications, conditions and agreements herein, and that the Third Party Beneficiaries shall have the right to enforce the easements and restrictions described herein.

3.0 PURPOSE: The purpose of this reservation is to retain in Grantor real property rights, which will run with the land, to facilitate the remediation of past environmental contamination; to protect human health and the environment by reducing the risk of exposure to contaminants; to provide for the long-term protectiveness of the remedial action; and to accomplish these goals in a manner that allows the redevelopment and beneficial reuse of the Property to the extent reasonably possible.

4.0 RESTRICTIONS ON USE: The parties intend that the restrictions and covenants that follow apply to the use of the Property, run with the land for the benefit of the Grantor and the Third Party Beneficiaries, and are binding upon:

- a) the Grantee and its successors, transferees, and assigns or persons acting under their direction and control; and
- b) any subsequent owner, occupants or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

4.1 Ground water uses: No activities shall be conducted on the Property that extract, consume, or otherwise use any groundwater from the Property, unless approved by U.S. EPA with State of Illinois concurrence nor shall any wells be constructed on the Property for purposes other than ground water monitoring, unless approved by U.S. EPA with State of Illinois concurrence.

4.2 Restrictions applicable to Site Y, Site Z and the western parking lot portion of the Property:

No action shall be taken to drill or intrude into, penetrate or otherwise disturb the asphalt cover on Site Y, Site Z and the western parking lot portion of the Property as identified in Appendix 2.

4.3 Effective date of restrictions: The foregoing restrictions on use of the Property are subject to applicable statutes, ordinances, rules and regulations, and take effect upon the date of execution of this document and remain in effect until both U.S. EPA and the State of Illinois issue a written determination to either modify or terminate the conditions and restrictions pursuant to Paragraph 5 below.

5. MODIFICATION OF RESTRICTIONS: The restrictive covenants in the preceding subparagraph shall continue unless and until U.S. EPA, with the concurrence of Illinois EPA, approves the modification or rescission of the restrictive covenants. U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in paragraph 4 in writing, as authorized by law. The owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth in paragraph 4 by submitting to U.S. EPA, the State of Illinois and Johns Manville, a written application that

identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and any proposed revisions to the environmental easement/restrictive covenants in this Deed. Each application for termination or modification of any restriction set forth in paragraphs 4 shall include a demonstration by the owner of the Property that the requested termination or modification will not interfere with, impair or reduce:

- a) the effectiveness of any remedial measures undertaken pursuant to the Consent Decree and First Amended Consent Decree;
- b) the long term protectiveness of the Remedial Action; or
- c) protection of human health and the environment.

If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (a) through (c), above, U.S. EPA will notify the owner of the Property in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restriction, U.S. EPA shall be deemed to have denied owner's application. Any modification of these restrictive covenants shall be recorded with Recorder of Deeds, Lake County, Illinois. Johns Manville reserves its right to use the dispute resolution procedures in Section XII of the First Amended Consent Decree concerning U.S. EPA's determination on an owner's application.

6. **MONITORING WELLS:** Grantor reserves access to all well equipment and improvements, and exclusive use of the existing monitoring wells/piezometers located on the Property (as identified below) together with access across the property as required for the purpose of maintaining, improving, monitoring and/or removing the wells/piezometers.

[Location of wells here]

7. **ENVIRONMENTAL EASEMENT:** Reserving to the Grantor, for its use, and for the use of the Third Party Beneficiaries, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes listed below.

- a) Implementing response actions in any CERCLA decision document affecting the Property or any associated work plans;
- b) Verifying any data or information submitted to U.S. EPA and Illinois EPA;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of the First Amended Consent Decree;
- d) Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, and obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including, but not limited to, reviews required by applicable statutes and/or regulations and by CERCLA;

- f) Implementing additional or new response actions if the U.S. EPA and/or Illinois EPA, pursuant to authority under applicable law, determine that such actions are necessary.

8. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect U.S. EPA's or the Illinois EPA's or the Illinois Attorney General's rights of entry and access or U.S. EPA's or the Illinois EPA's or the Illinois Attorney General's authority to take response actions under CERCLA, the NCP, or other federal or state law.

9. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is intended or conveyed by this instrument.

10. ADMINISTRATIVE JURISDICTION: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the U.S. EPA and any successor departments or agencies of the United States. The state agency having administrative jurisdiction over the interests acquired by the State of Illinois by this instrument is the Illinois EPA and any successor departments or agencies of the State of Illinois.

11. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth in Paragraph 6 and 7 above, the United States, State of Illinois and/or the Grantor may enter the Property from time to time for the purposes of performing inspections, overseeing remedy implementation or enforcing the restrictions set forth in subparagraphs 4.1-4.2 above after permission from or reasonable notice to the owners or the owners' representative or, if applicable, the lessee. The Grantor and the United States and the State of Illinois as Third Party Beneficiaries shall be entitled to enforce the terms of this instrument in a judicial action seeking specific performance or other applicable remedies at law or in equity. The right to so enforce the conditions and restrictions in this instrument are in addition to any other remedies that may be available, including, but not limited to, remedies under CERCLA. Enforcing the terms of this instrument shall be at the discretion of the Grantor, the United States or the State and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this Agreement shall not be deemed a waiver by the Grantor or the United States or the State of such terms, or any other term, or any rights of the Grantor or Grantee or the Third Party Beneficiaries under this instrument. The easement and covenants shall inure to the benefit of the public in general and the Property and are enforceable by the Grantor, the United States and the State of Illinois.

12. RESERVATION OF DEFENSES: Nothing in this instrument shall be construed to enlarge the jurisdiction of federal courts or to create subject matter jurisdiction to adjudicate any claims against U.S. EPA and the Illinois EPA or otherwise operate as a waiver of any sovereign immunity of the United States and the State of Illinois, and the United States and the State of Illinois expressly reserve all rights and defenses they may have in connection with any action initiated by Grantor pursuant to this instrument.

13. WAIVER OF CERTAIN DEFENSES: Grantee hereby waives any defense of laches, estoppel, or prescription. Grantee reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are compatible with the restrictions and rights granted here.

14. COVENANTS:

a) Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Appendix 3 attached hereto.

b) Grantee covenants for itself, its successors and assigns that it shall include and otherwise make legally binding the above access rights and groundwater use restrictions in all subsequent leases, transfer or conveyance documents relating to the Property subject hereto. Notwithstanding this provision, failure to include these access rights and groundwater use restrictions in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns. The Grantee, for itself, its successors and assigns, covenants that it will not undertake or allow any activity on or use of the Property that would violate the groundwater use restrictions contained herein.

15. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Johns Manville
717 17th St.
Denver CO 80202
Attn: Legal Department
Environmental

To Grantee

To Third Party Beneficiaries

United States Environmental Protection Agency
Superfund Division
77 W. Jackson Blvd.
Mail Code: SR-6J
Chicago IL 60604-3590

Illinois Environmental Protection Agency
Federal Site Remediation Section
Division of Remediation Management
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

16. GENERAL PROVISIONS:

a) Controlling law: The interpretation and performance of the easements and restrictive covenants shall be governed by the laws of the United States and the State of Illinois, as applicable. The right to enforce the conditions and restrictions in this instrument are in addition to other rights and remedies that may be available, including, but not limited to, administrative and judicial remedies under CERCLA.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantee's title in any respect.

f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, 1) the parties hereto and their respective personal representatives, heirs, successors, and assigns as well as persons acting under their direction and control; and 2) any subsequent owner, occupants or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control. The covenants, terms, conditions, and restrictions of this instrument shall continue as a servitude running in perpetuity with the Property. The rights of the Grantee under this instrument are freely assignable, subject to the notice provisions hereof. The rights of the U.S. EPA and Illinois EPA are freely assignable to any public entity, subject to the notice provisions hereof.

g) Termination of rights and obligations: The Grantee's rights and obligations under this instrument terminate upon transfer of the Grantee's interest in the Property, except that liability for acts or omissions occurring prior to transfer as well as defenses thereto shall survive transfer.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. Appendices

Appendix 1	-	Legal description of the Property
Appendix 2	-	Asphalt Cover
Appendix 3	-	Permitted Encumbrances

IN WITNESS WHEREOF, Grantor has caused this Warranty Deed With Reservation of Environmental Easement and Restrictive Covenants to be signed in its name.

Executed this _____ day of _____, 200_.

JOHNS MANVILLE

By: _____

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

On this __ day of ____, 200__, before me, the undersigned, a Notary Public in and for the State of Colorado, duly commissioned and sworn, personally appeared ____, known to be the _____ of Johns Manville, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of Colorado

My Commission Expires: _____.

I, the undersigned Grantee, do hereby accept the herein-described Property, subject to the easements, restrictive covenants, notices, agreements, reservations, conditions, and exceptions hereinabove expressed.

Executed this _____ day of _____, 200_, in _____, State of _____.

[ENTITY]

BY: _____

TITLE: _____

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing Warranty Deed With Reservation of Environmental Protection Easements was acknowledged before me this _____ day of _____, 200_, by _____.

Notary Public

My commission expires:

slb **United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	George Lindberg	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	88 C 630	DATE	DEC 16 2004
CASE TITLE	United States of America vs. Manville Sales Corporation		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

--

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Joint motion to enter first amended consent decree [90] is granted. The first amended consent decree is entered.
(11)	[For further detail see order on the reverse side of the original minute order.]	

<input checked="" type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials slb	Date/time received in central Clerk's Office	DEC 17 2004 date docketed <i>slb</i>	Document Number 108
			docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

ORDER

Attached to the joint motion to enter first amended consent decree are comments submitted by the City of Waukegan, the Waukegan Park District, Mr. Paul Kakuris who is President of the Illinois Dunesland Preservation Society, and Mr. Jeffrey C. Camplin. The comments were regarding the information made available to the public during the comment period; areas other than the Facility and SRP property; and the Facility and SRP property.

Mr. Kakuris contended that the public was put at a disadvantage during the comment period because the EPA did not provide complete and ready access about the Facility. However, it appears that the EPA provided the access in the manner required by the National Contingency Plan, so there is no merit to this complaint.

Mr. Kakuris and Mr. Camplin want the Amended Decree to require cleanup of areas near the Facility (e.g., Illinois Beach State Park and other specified sites), and Mr. Kakuris contends the Amended Decree should not release Manville from liability for contamination in these areas. While cleanup of these areas are not addressed in the Amended Consent Decree, the matter of remedial measures for certain areas near the Facility remains a matter the EPA and State are considering. The Amended Consent Decree would not preclude pursuit of such measures. The Amended Consent Decree need not address all of these matters.

Mr. Camplin asked whether the Amended Decree properly addresses the risks of asbestos. The remedy required by the Amended Decree exceeds the requirements of the National Emission Standards for Hazardous Air Pollutants and appears to adequately protect the public from release of asbestos that is not removed from the Facility by means of a carefully specified landfill. Mr. Kakuris contends that the danger of asbestos in the Facility's industrial canal leaking or washing onto nearby shorelines, including that of the Nature Preserve at Illinois Beach State Park, is not adequately addressed in the Amended Decree. However, the Amended Decree requires Manville to cap or remove asbestos-containing sediments in the industrial canal; requires Manville to develop work plans subject to EPA approval to implement the Second ESD, which will require construction and maintenance of a storm water diversion system which would be protective of Lake Michigan; requires that the water flowing into Lake Michigan not contain impermissibly high levels of asbestos; and requires Manville to implement a contingency plan to meet a more stringent standard if that standard is established in the future by the EPA or the State. Thus, there are adequate provisions dealing with the industrial canal and the danger of asbestos from that canal. Mr. Kakuris seems to feel the Amended Decree does not deal adequately with contaminated sludge in the Facility's lagoon system. These, too, the Amended Decree requires Manville to cap or remove. Mr. Kakuris seems to believe the Amended Decree does not properly deal with an unlicensed landfill on the property. However, the Amended Decree would not release Manville from liability for alleged landfill violations. Mr. Camplin questions whether the sampling protocol and analytical methods used identify all asbestos fibers and structures hazardous to humans. These matters have been addressed, and Manville will be required to conduct sampling and testing in the future. Mr. Kakuris contends more than a minimum of 30 years of O&M should be required. However, this is a minimum period and the EPA and the State may require more if appropriate. This seems a reasonable approach. Mr. Camplin contends the Amended Decree should subject the former manufacturing area now enrolled in the State's Site Remediation Program (SRP) to the same land-use restrictions as the Facility. The Amended Decree limits provisions regarding the SRP to provisions to guarantee access for the purpose of implementation of the Decree and prevention of imminent harm. It reserves claims of the U.S. and the State regarding SRP property. The City and Park District contend the Amended Decree is inconsistent with their plans to develop Manville's property into recreational or open space. The Amended Decree does not prohibit recreational use of the property; however, because the remedy leaves certain hazardous materials interred on the property, it would be necessary for any plans to be consistent with the remedy. Also, if the City or Park District believes the restrictions are incompatible with their plans, they may petition the EPA and State for modification.

The court finds that none of the comments provides a reason for denial of the request to enter the First Amended Consent Decree. Therefore, the joint motion is being granted and the First Amended Consent Decree is being entered.

